

WEDNESDAY, MAY 22, 2002

EIGHTY-EIGHTH LEGISLATIVE DAY

The House met at 10:00 a.m. and was called to order by Mr. Speaker Naifeh.

The proceedings were opened with prayer by Kevin Shrum, Inglewood Baptist Church, Nashville, Tennessee.

Representative Turner (Davidson) led the House in the Pledge of Allegiance to the Flag.

ROLL CALL

The roll call was taken with the following results:

Present.....96

Representatives present were: Armstrong, Arriola, Baird, Beavers, Bittle, Black, Bone, Bowers, Boyer, Briley, Brooks, Brown, Buck, Bunch, Buttry, Caldwell, Casada, Chumney, Clem, Cole (Carter), Cole (Dyer), Curtiss, Davidson, Davis (Washington), Davis (Cocke), DeBerry J, DeBerry L, Dunn, Ferguson, Fitzhugh, Ford, Fowlkes, Fraley, Garrett, Givens, Godsey, Goins, Hagood, Hargett, Hargrove, Harwell, Head, Hood, Johnson, Jones U, Kent, Kernell, Kisber, Langster, Lewis, Maddox, McCord, McDaniel, McDonald, McKee, McMillan, Miller, Montgomery, Mumpower, Newton, Odom, Overbey, Patton, Phelan, Phillips, Pinion, Pleasant, Pruitt, Rhinehart, Ridgeway, Rinks, Roach, Rowland, Sands, Sargent, Scroggs, Sharp, Shaw, Shepard, Stanley, Tidwell, Tindell, Todd, Turner (Hamilton), Turner (Shelby), Turner (Davidson), Vincent, Walker, West, Westmoreland, White, Whitson, Windle, Winningham, Wood, Mr. Speaker Naifeh -- 96.

EXCUSED

The Speaker announced that the following member(s) has/have been excused, pursuant to request(s) under **Rule No. 20**:

Representative S. Jones; illness.

SPONSORS ADDED

Under **Rule No. 43**, the following members were permitted to add their names as sponsors as indicated below, the prime sponsor of each having agreed to such addition:

House Resolution No. 317: Rep(s). Maddox and J. DeBerry as prime sponsor(s).

House Resolution No. 318: Rep(s). Maddox and J. DeBerry as prime sponsor(s).

House Bill No. 247: Rep(s). Montgomery and Ferguson as prime sponsor(s).

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House Bill No. 1131: Rep(s). Buttry, Baird, Black, Beavers, Boyer, Sargent, Scroggs, Clem, Vincent, Dunn, Wood, Pleasant, Bittle and Sharp as prime sponsor(s).

House Bill No. 2067: Rep(s). Hargett, Rowland, Baird, Johnson, Pleasant, Sargent, Buttry, Dunn, McDonald, Black, Montgomery, Todd, Kent, Cole (Carter), Pinion and Harwell as prime sponsor(s).

House Bill No. 2549: Rep(s). Goins, Beavers, Kernell, Dunn, Rowland, Black, Todd, Baird, Hargett, Buttry, Montgomery and Black as prime sponsor(s).

House Bill No. 2957: Rep(s). Phelan as prime sponsor(s).

House Bill No. 3232: Rep(s). Naifeh, Hargett, Towns, Todd, Pinion, Westmoreland, Bowers, Kent and Cole (Carter) as prime sponsor(s).

SPONSORS REMOVED

On motion, Rep(s). Boyer, Davis (Cocke), Sharp, Patton, Hood, Fraley, McDonald, Winningham, McCord, McKee and Buck was/were removed as sponsor(s) of **House Bill No. 2957**.

MESSAGE FROM THE SENATE

May 16, 2002

MR. SPEAKER: I am directed to return to the House, House Joint Resolution(s) No(s). 1079; signed by the Speaker.

RUSSELL A. HUMPHREY, Chief Clerk.

REPORT OF CHIEF ENGROSSING CLERK

May 16, 2002

The following bill(s) have been transmitted to the Governor for his action: House Joint Resolution(s) No(s). 1079.

BETTY KAY FRANCIS, Chief Engrossing Clerk.

MESSAGE FROM THE GOVERNOR

May 16, 2002

MR. SPEAKER: I am directed by the Governor to return herewith: House Bill(s) No(s). 3258, 3263 and 3266, without his signature.

JAY BALLARD, Counsel to the Governor.

MESSAGE FROM THE GOVERNOR

May 16, 2002

MR. SPEAKER: I am directed by the Governor to return herewith: House Joint Resolution(s) No(s). 1079, with his approval.

JAY BALLARD, Counsel to the Governor.

MESSAGE FROM THE SENATE

May 16, 2002

MR. SPEAKER: I am directed to transmit to the House, Senate Bill(s) No(s). 1798, 2052, 2153, 2392, 2580, 2632, 2726, 2929, 3115; also, Senate Joint Resolution(s) No(s). 504, 520 and 807 for the signature of the Speaker.

RUSSELL A. HUMPHREY, Chief Clerk.

SIGNED

May 16, 2002

The Speaker signed the following: Senate Bill(s) No(s). 1798, 2052, 2153, 2392, 2580, 2632, 2726, 2929, 3115; also, Senate Joint Resolution(s) No(s). 504, 520 and 807.

MESSAGE FROM THE SENATE

May 16, 2002

MR. SPEAKER: I am directed to return to the House, House Bill(s) No(s). 2484; substituted for Senate Bill(s) on the same subject(s) and passed by the Senate.

RUSSELL A. HUMPHREY, Chief Clerk.

ENROLLED BILLS

May 16, 2002

The following bill(s) have been compared, enrolled, and are ready for the signature(s) of the Speaker(s): House Joint Resolution(s) No(s). 683, 704, 723, 726, 830, 1048, 1078 and 1092.

BETTY KAY FRANCIS, Chief Engrossing Clerk.

SIGNED

May 16, 2002

The Speaker signed the following: House Joint Resolution(s) No(s). 683, 704, 723, 726, 830, 1048, 1078 and 1092.

BETTY KAY FRANCIS, Chief Engrossing Clerk.

MESSAGE FROM THE SENATE

May 16, 2002

MR. SPEAKER: I am directed to transmit to the House, Senate Bill(s) No(s). 2033, 2035, 2039, 2046, 2064, 2065, 2069, 2096, 2111, 2380, 2488, 2778 and 2883; for the signature of the Speaker.

RUSSELL A. HUMPHREY, Chief Clerk.

SIGNED

May 16, 2002

The Speaker signed the following: Senate Bill(s) No(s). 2033, 2035, 2039, 2046, 2064, 2065, 2069, 2096, 2111, 2380, 2488, 2778 and 2883.

ENROLLED BILLS

May 16, 2002

MR. SPEAKER: Your Chief Engrossing Clerk begs leave to report that we have carefully compared House Resolution(s) No(s). 296, 297, 298, 299, 300, 301, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312 and 313; and find same correctly enrolled and ready for the signature of the Speaker.

BETTY KAY FRANCIS, Chief Engrossing Clerk.

SIGNED

May 16, 2002

The Speaker signed the following: House Resolution(s) No(s). 296, 297, 298, 299, 300, 301, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312 and 313.

BETTY KAY FRANCIS, Chief Engrossing Clerk.

ENROLLED BILLS

May 16, 2002

The following bill(s) have been compared, enrolled, and are ready for the signature(s) of the Speaker(s): House Joint Resolution(s) No(s). 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 961, 962, 963, 964, 965, 966, 967, 968, 969, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025 and 1026.

BETTY KAY FRANCIS, Chief Engrossing Clerk.

ENROLLED BILLS

May 16, 2002

The following bill(s) have been compared, enrolled, and are ready for the signature(s) of the Speaker(s): House Joint Resolution(s) No(s). 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035 and 1036.

BETTY KAY FRANCIS, Chief Engrossing Clerk.

SIGNED

May 16, 2002

The Speaker signed the following: House Joint Resolution(s) No(s). 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 961, 962, 963, 964, 965, 966, 967, 968, 969, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035 and 1036.

BETTY KAY FRANCIS, Chief Engrossing Clerk.

MESSAGE FROM THE SENATE

May 17, 2002

MR. SPEAKER: I am directed to return to the House, House Joint Resolution(s) No(s). 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 961, 962, 963, 964, 965, 966, 967, 968, 969, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035 and 1036; signed by the Speaker.

RUSSELL A. HUMPHREY, Chief Clerk.

REPORT OF CHIEF ENGROSSING CLERK

May 17, 2002

The following bill(s) have been transmitted to the Governor for his action: House Joint Resolution(s) No(s). 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 961, 962, 963, 964, 965, 966, 967, 968, 969, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035 and 1036.

BETTY KAY FRANCIS, Chief Engrossing Clerk.

MESSAGE FROM THE SENATE

May 17, 2002

MR. SPEAKER: I am directed to return to the House, House Joint Resolution(s) No(s). 683, 704, 723, 726, 830, 1048, 1078 and 1092; signed by the Speaker.

RUSSELL A. HUMPHREY, Chief Clerk.

REPORT OF CHIEF ENGROSSING CLERK

May 17, 2002

The following bill(s) have been transmitted to the Governor for his action: House Joint Resolution(s) No(s). 683, 704, 723, 726, 830, 1048, 1078 and 1092.

BETTY KAY FRANCIS, Chief Engrossing Clerk.

ENROLLED BILLS

May 17, 2002

The following bills have been compared, enrolled, and are ready for the signature(s) of the Speaker(s): House Bill(s) No(s). 1201, 2716, 2737, 2892, 3138, 3256, 3265, 3270 and 3272.

BETTY KAY FRANCIS, Chief Engrossing Clerk.

SIGNED

May 17, 2002

The Speaker signed the following: House Bill(s) No(s). 1201, 2716, 2737, 2892, 3138, 3256, 3265, 3270 and 3272.

BETTY KAY FRANCIS, Chief Engrossing Clerk.

MESSAGE FROM THE SENATE

May 17, 2002

MR. SPEAKER: I am directed to return to the House, House Bill(s) No(s). 1201, 2716, 2737, 2892, 3138, 3256, 3265, 3270 and 3272; signed by the Speaker.

RUSSELL A. HUMPHREY, Chief Clerk.

REPORT OF CHIEF ENGROSSING CLERK

May 17, 2002

The following bill(s) have been transmitted to the Governor for his action: House Bill(s) No(s). 1201, 2716, 2737, 2892, 3138, 3256, 3265, 3270 and 3272.

BETTY KAY FRANCIS, Chief Engrossing Clerk.

MESSAGE FROM THE SENATE

May 17, 2002

MR. SPEAKER: I am directed to transmit to the House, Senate Joint Resolution(s) No(s). 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805 and 806; for the signature of the Speaker.

RUSSELL A. HUMPHREY, Chief Clerk.

SIGNED

May 17, 2002

The Speaker signed the following: Senate Joint Resolution(s) No(s). 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805 and 806.

MESSAGE FROM THE GOVERNOR

May 21, 2002

MR. SPEAKER: I am directed by the Governor to return herewith: House Joint Resolution(s) No(s). 683, 723, 726, 830, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 961, 962, 963, 964, 965, 966, 967, 968, 969, 1048 and 1092, with his approval.

JAY BALLARD, Counsel to the Governor.

MESSAGE FROM THE SENATE

May 22, 2002

MR. SPEAKER: I am directed to transmit to the House, Senate Joint Resolution(s) No(s). 829; adopted for concurrence.

RUSSELL A. HUMPHREY, Chief Clerk.

Senate Joint Resolution No. 829 -- Memorials, Interns - Sarah Katharine Elder. by *Kyle, *Clabough, *Davis L, *Trail, *Rochelle.

MESSAGE FROM THE SENATE
May 22, 2002

MR. SPEAKER: I am directed to transmit to the House, Senate Joint Resolution(s) No(s). 835; adopted for concurrence.

RUSSELL A. HUMPHREY, Chief Clerk.

Senate Joint Resolution No. 835 -- General Assembly, Recess & Reconvene - Recesses general assembly from close of business on Wednesday, May 22, 2002, to Wednesday, May 29, 2002. by *Crutchfield.

MESSAGE FROM THE SENATE
May 22, 2002

MR. SPEAKER: I am directed to transmit to the House, Senate Joint Resolution(s) No(s). 679, 680, 832 and 834; all adopted for concurrence.

RUSSELL A. HUMPHREY, Chief Clerk.

Senate Joint Resolution No. 679 -- General Assembly, Confirmation of Appointment - Flavius A. Barker, State Board of Education. by *Elsea, *Burks, *Davis L, *McNally, *Williams, Sen., *Carter, *Cooper J.

Senate Joint Resolution No. 680 -- General Assembly, Confirmation of Appointment - Richard Ray, State Board of Education. by *Clabough, *McNally.

Senate Joint Resolution No. 832 -- Memorials, Academic Achievement - Jesse Longoria. by *Person, *Atchley, *Blackburn, *Burchett, *Burks, *Carter, *Clabough, *Cohen, *Cooper J, *Crowe, *Crutchfield, *Davis L, *Dixon, *Elsea, *Ford J, *Fowler, *Graves, *Harper, *Haun, *Haynes, *Henry, *Herron, *Jackson, *Kurita, *Kyle, *McNally, *Miller J, *Norris, *Person, *Ramsey, *Rochelle, *Trail, *Wilder, *Williams, Sen..

Senate Joint Resolution No. 834 -- Memorials, Professional Achievement - Mary Sue Turner, 2002 Memorial Award for Excellence in Teaching. by *Person, *Atchley, *Blackburn, *Burchett, *Burks, *Carter, *Clabough, *Cohen, *Cooper J, *Crowe, *Crutchfield, *Davis L, *Dixon, *Elsea, *Ford J, *Fowler, *Graves, *Harper, *Haun, *Haynes, *Henry, *Herron, *Jackson, *Kurita, *Kyle, *McNally, *Miller J, *Norris, *Person, *Ramsey, *Rochelle, *Trail, *Wilder, *Williams, Sen..

MESSAGE FROM THE SENATE
May 22, 2002

MR. SPEAKER: I am directed to transmit to the House, Senate Joint Resolution(s) No(s). 836; adopted for concurrence.

RUSSELL A. HUMPHREY, Chief Clerk.

Senate Joint Resolution No. 836 -- Memorials, Personal Achievement - Christopher S. Person. by *Person, *Atchley, *Blackburn, *Burchett, *Burks, *Carter, *Clabough, *Cohen, *Cooper J, *Crowe, *Crutchfield, *Davis L, *Dixon, *Eisea, *Ford J, *Fowler, *Graves, *Harper, *Haun, *Haynes, *Henry, *Herron, *Jackson, *Kurita, *Kyle, *McNally, *Miller J, *Norris, *Person, *Ramsey, *Rochelle, *Trail, *Wilder, *Williams, Sen..

PERSONAL ORDERS

RECOGNITION IN THE WELL

Reps. Davidson, Head and Casada were recognized in the Well to introduce Mr. Mike Clark, a member of the Robertson County Emergency Management Team.

INTRODUCTION OF RESOLUTIONS

On motion, pursuant to **Rule No. 17**, the resolution(s) listed was/were introduced and referred to the appropriate Committee:

***House Joint Resolution No. 1091** -- Highway Signs - "Kenneth D. Foster Memorial Bridge", bridge spanning Fountain Creek on State Route 373 in Maury County. by *Sands, *Head.

House Finance, Ways and Means Committee

RESOLUTIONS

Pursuant to **Rule No. 17**, the following resolution(s) was/were introduced and placed on the Consent Calendar for May 29, 2002:

House Resolution No. 351 -- Memorials, Interns - Edward Means Baylor, IV. by *Brown.

House Resolution No. 352 -- Memorials, Interns - Scott Bouslog. by *Brown.

House Joint Resolution No. 1112 -- Memorials, Recognition - Janey Walters, Mary Catherine Strobel Award for Direct Service Volunteer of the Year. by *Sands.

SENATE JOINT RESOLUTIONS
(Congratulatory and Memorializing)

Pursuant to **Rule No. 17**, the resolution(s) listed was/were noted as being placed on the Consent Calendar for May 29, 2002:

Senate Joint Resolution No. 829 -- Memorials, Interns - Sarah Katharine Elder. by *Kyle, *Clabough, *Davis L, *Trail, *Rochelle.

Senate Joint Resolution No. 832 -- Memorials, Academic Achievement - Jesse Longoria. by *Person, *Atchley, *Blackburn, *Burchett, *Burks, *Carter, *Clabough, *Cohen, *Cooper J, *Crowe, *Crutchfield, *Davis L, *Dixon, *Eisea, *Ford J, *Fowler, *Graves, *Harper, *Haun, *Haynes, *Henry, *Herron, *Jackson, *Kurita, *Kyle, *McNally, *Miller J, *Norris, *Person, *Ramsey, *Rochelle, *Trail, *Wilder, *Williams, Sen..

Senate Joint Resolution No. 834 -- Memorials, Professional Achievement - Mary Sue Turner, 2002 Memorial Award for Excellence in Teaching. by *Person, *Atchley, *Blackburn, *Burchett, *Burks, *Carter, *Clabough, *Cohen, *Cooper J, *Crowe, *Crutchfield, *Davis L, *Dixon, *Eisea, *Ford J, *Fowler, *Graves, *Harper, *Haun, *Haynes, *Henry, *Herron, *Jackson, *Kurita, *Kyle, *McNally, *Miller J, *Norris, *Person, *Ramsey, *Rochelle, *Trail, *Wilder, *Williams, Sen..

Senate Joint Resolution No. 836 -- Memorials, Personal Achievement - Christopher S. Person. by *Person, *Atchley, *Blackburn, *Burchett, *Burks, *Carter, *Clabough, *Cohen, *Cooper J, *Crowe, *Crutchfield, *Davis L, *Dixon, *Eisea, *Ford J, *Fowler, *Graves, *Harper, *Haun, *Haynes, *Henry, *Herron, *Jackson, *Kurita, *Kyle, *McNally, *Miller J, *Norris, *Person, *Ramsey, *Rochelle, *Trail, *Wilder, *Williams, Sen..

INTRODUCTION OF BILLS

On motion, the following bills were introduced and passed first consideration:

House Bill No. 3286 -- Savannah - Subject to local approval, authorizes city commission to exercise current powers by means of either resolution or ordinance. Amends Chapter 683 of the Private Acts of 1951; as amended. by *Rinks.

House Bill No. 3287 -- Gatlinburg - Subject to local approval, authorizes hotel motel tax to be increased from 3 percent to up to 5 percent of consideration charged to transients. Amends Chapter 200 of the Private Acts of 1978. by *McCord, *Montgomery.

House Bill No. 3288 -- Pigeon Forge - Subject to local approval, increases gross receipts tax from 1 percent to 2 percent. Amends Chapter 808 of the Public Acts of 1976. by *Montgomery, *McCord.

House Bill No. 3289 -- Jellico - Subject to local approval, rewrites charter. Amends Chapter 101 of the Private Acts of 1998. by *Baird.

SENATE BILLS TRANSMITTED

On motion, the Senate Bills listed below, transmitted to the House, were held on the Clerk's desk pending third consideration of the companion House Bill as noted:

***Senate Bill No. 898** -- Education, Higher - Reclassifies "individual" as "person" under Tennessee Baccalaureate Education System Trust (BEST) Act as one that purchases tuition units or makes contributions to account. Amends TCA Title 49, Chapter 7, Part 8. by *Haynes. (HB1318 by *Davidson)

***Senate Bill No. 1303** -- Motor Vehicles, Titling and Registration - Authorizes issuance of I Love TDOT cultural license plates. Amends TCA Title 54 and Title 55. by *Haun, *Herron, *Cohen. (HB1893 by *Head)

Senate Bill No. 2476 -- Water - Prohibits lowering of lakes 30 feet of full pool except in state or national declared disaster or emergency. Amends TCA Title 7; Title 40 and Title 69. by *Haun, *Williams, Sen.. (*HB2405 by *Davis (Cocke))

***Senate Bill No. 2583** -- Election Laws - Enacts "Tennessee Provisional Voting Rights Act of 2002." Amends TCA Section 2-7-112. by *Burks. (HB2831 by *Briley, *Jones, S.)

***Senate Bill No. 2764** -- Motor Vehicles, Titling and Registration - Specifies that payment of fee equal to cost of actually designing and manufacturing military cultural plates only applicable upon initial issuance or reissuance of plates, and not applicable at renewal. Amends TCA Title 55, Chapter 4, Part 2. by *Trail. (HB2615 by *Rowland)

Senate Bill No. 2899 -- Motor Vehicles - Requires motor vehicles carrying more than 15 passengers for hire less than two miles to major public scheduled events to have \$1,000,000 in liability insurance. Amends TCA Title 65, Chapter 15, Part 1. by *Haun. (*HB2816 by *Whitson)

HOUSE BILLS ON SECOND CONSIDERATION

On motion, bills listed below passed second consideration and were referred by the Speaker to Committee or held on the Clerk's desk as noted:

House Bill No. 3285 -- Jackson -- Local Bill Held on House Desk

REPORTS FROM STANDING COMMITTEES

The committees that met on **May 16, 2002**, reported the following:

COMMITTEE ON CALENDAR AND RULES

The Calendar and Rules Committee met and set the following bill(s) on the **Regular Calendar** for **May 22, 2002**: House Bill(s) No(s). 3232, 247, 2450, 2105, 2650 and 2840.

The Committee set the following bill(s) and/or resolution(s) on the **Consent Calendar** for **May 22, 2002**: House Bill(s) No(s). 2347.

REPORTS FROM STANDING COMMITTEES

The committees that met on **May 21, 2002**, reported the following:

COMMITTEE ON CALENDAR AND RULES

The Calendar and Rules Committee met and set the following bill(s) on the **Regular Calendar** for **May 22, 2002**: House Bill(s) No(s). 1318, 1210, 2617 and 1139.

FINANCE, WAYS AND MEANS

The Finance, Ways and Means Committee recommended for passage: House Bill(s) No(s). 2479, 2549, 2651, House Joint Resolution(s) No(s). 920 and 735, also House Bill(s) No(s). 2502, 2067, 1131, 646 and 1266 with amendments. Under the rules, each was transmitted to the Calendar and Rules Committee.

COMMITTEE ON CALENDAR AND RULES

Following the meeting of the Finance, Ways and Means Committee, the Calendar and Rules Committee met again and set the following bill(s) on the **Regular Calendar** for **May 22, 2002**: House Bill(s) No(s). 2502, 2479, 2067, 1131, 646, 2549, 2651 and 1266.

The Committee set the following bill(s) and/or resolution(s) on the **Consent Calendar** for **May 22, 2002**: House Joint Resolution(s) No(s). 920, 735, House Bill(s) No(s). 2720, 2747, 2756, 2762, 2764 and 2770.

CONSENT CALENDAR

House Bill No. 3282 -- Greenbrier - Subject to local approval, rewrites charter. Amends Chapter 207 of the Private Acts of 1996. by *Davidson. (SB3236 by *Graves)

House Bill No. 3283 -- Chapel Hill - Subject to local approval, revises charter regarding election of officials, jurisdiction of town court, and other matters. Amends Chapter 48 of the Private Acts of 2001. by *Beavers, *Fowlkes. (SB3237 by *Blackburn)

House Bill No. 2347 -- Education, Higher - Clarifies educational benefits available to veterans and their dependents. Amends TCA Title 49, Chapter 7. by *Givens. (*SB2190 by *Crowe, *Williams, Sen., *Dixon, *Haynes)

On motion, House Bill No. 2347 was made to conform with **Senate Bill No. 2190**; the Senate Bill was substituted for the House Bill.

House Joint Resolution No. 1041 -- Memorials, Heroism - Robertson County Emergency Medical Service. by *Davidson.

House Joint Resolution No. 674 -- Memorials, Heroism - Pleasant View Volunteer Fire Department. by *Davidson.

***House Joint Resolution No. 920** -- Highway Signs - "Viscen Charles Morrow Bridge", U.S. Highway 64 in Hardeman County. by *Shaw.

WEDNESDAY, MAY 22, 2002 – EIGHTY-EIGHTH LEGISLATIVE DAY

***House Joint Resolution No. 735** -- Highway Signs - Designates U.S. Highway 45W in Gibson County as "Blue Star Memorial Highway". by *Phelan.

House Bill No. 2720 -- Sunset Laws - Home improvement commission, June 30, 2008. Amends TCA Title 4, Chapter 29 and Title 62, Chapter 37. by *Kernell, *Brooks, *Cooper B. (*SB2038 by *Harper)

On motion, House Bill No. 2720 was made to conform with **Senate Bill No. 2038**; the Senate Bill was substituted for the House Bill.

House Bill No. 2747 -- Sunset Laws - Deletes obsolete references to Tennessee tollway authority. Amends TCA Section 4-29-221 and Title 54, Chapter 15, Part 1. by *Kernell, *Brooks, *Cooper B. (*SB2110 by *Harper, *Burchett, *Trail)

House Bill No. 2756 -- Sunset Laws - Tennessee child care facilities corporation, June 30, 2008. Amends TCA Title 4, Chapter 37 and Title 4, Chapter 29. by *Kernell, *Brooks, *Cooper B. (*SB2093 by *Harper, *Burchett, *Trail)

On motion, House Bill No. 2756 was made to conform with **Senate Bill No. 2093**; the Senate Bill was substituted for the House Bill.

House Bill No. 2762 -- Sunset Laws - Child care advisory council, June 30, 2004. Amends TCA Title 4, Chapter 29 and Title 49, Chapter 1. by *Kernell, *Brooks, *Cooper B. (*SB2091 by *Harper)

On motion, House Bill No. 2762 was made to conform with **Senate Bill No. 2091**; the Senate Bill was substituted for the House Bill.

House Bill No. 2764 -- Sunset Laws - State board for alarm systems contractors, June 30, 2008. Amends TCA Title 4, Chapter 29 and Title 62, Chapter 32. by *Kernell, *Brooks, *Cooper B. (*SB2087 by *Harper)

On motion, House Bill No. 2764 was made to conform with **Senate Bill No. 2087**; the Senate Bill was substituted for the House Bill.

House Bill No. 2770 -- Sunset Laws - Tennessee rehabilitative initiative in correction board, June 30, 2006. Amends TCA Title 4, Chapter 29 and Title 41, Chapter 22, Part 4. by *Kernell, *Brooks, *Cooper B. (*SB2072 by *Harper, *Burchett, *Trail)

On motion, House Bill No. 2770 was made to conform with **Senate Bill No. 2072**; the Senate Bill was substituted for the House Bill.

Rep. Davidson moved that all members voting aye on House Joint Resolution(s) No(s). 1041 and 674 be added as sponsors, which motion prevailed.

Rep. Shaw moved that all members voting aye on House Joint Resolution No. 920 be added as sponsors, which motion prevailed.

WEDNESDAY, MAY 22, 2002 – EIGHTY-EIGHTH LEGISLATIVE DAY

Pursuant to **Rule No. 50**, Rep. Phillips moved that all House Bills having companion Senate Bills and are on the Clerk's desk be conformed and substituted for the appropriate House Bill, all Senate and House Bills on the Consent Calendar be passed on third and final consideration, all House Resolutions and House Joint Resolutions be adopted, and all Senate Joint Resolutions on the Consent Calendar be concurred in, which motion prevailed by the following vote:

Ayes96
Noes0

Representatives voting aye were: Armstrong, Arriola, Baird, Beavers, Bittle, Black, Bone, Bowers, Boyer, Briley, Brooks, Buck, Bunch, Buttry, Caldwell, Casada, Chumney, Clem, Cole (Carter), Cole (Dyer), Cooper, Curtiss, Davidson, Davis (Washington), Davis (Cocke), DeBerry J, DeBerry L, Dunn, Ferguson, Fitzhugh, Ford, Fowlkes, Fraley, Garrett, Givens, Godsey, Goins, Hagood, Hargett, Hargrove, Harwell, Head, Hood, Johnson, Jones U, Kent, Kernell, Kisber, Langster, Lewis, Maddox, McCord, McDaniel, McDonald, McKee, McMillan, Miller, Montgomery, Mumpower, Newton, Odom, Overbey, Patton, Phelan, Phillips, Pinion, Pleasant, Pruitt, Rhinehart, Ridgeway, Rinks, Roach, Rowland, Sands, Sargent, Scroggs, Sharp, Shaw, Shepard, Stanley, Tidwell, Tindell, Todd, Turner (Hamilton), Turner (Shelby), Turner (Davidson), Vincent, Walker, West, Westmoreland, White, Whitson, Windle, Winningham, Wood, Mr. Speaker Naifeh -- 96.

A motion to reconsider was tabled.

REGULAR CALENDAR

***House Bill No. 2431** -- Tort Liability - Extends from January 1, 2005, to January 1, 2007, date on which immunity for computer system failure due to date or time changes expires. Amends TCA Title 29, Chapter 20. by *Brown. (SB2518 by *Crutchfield)

Further consideration of House Bill No. 2431 previously considered on May 1, 2002 and May 8, 2002, at which time it was reset for today's Calendar.

On motion, House Bill No. 2431 was moved down 10 places on the Calendar.

Senate Bill No. 3020 -- Sewage - Extends from two to four years department of environment and conservation pilot project study of advanced treatment systems (ATS); classifies as Class C misdemeanor each failure of ATS manufacturer to comply with operation and maintenance check requirements. Amends TCA Title 68, Chapter 221, Part 4. by *Wilder. (*HB2960 by *Fitzhugh)

Further consideration of Senate Bill No. 3020 previously considered on May 8, 2002, at which time the bill was reset for today's calendar. The bill was also considered on April 24, 2002 and May 1, 2002, at which time the Senate Bill was substituted for the House Bill and the House adopted Amendment(s) No(s). 1.

Rep. Fitzhugh moved that Senate Bill No. 3020, as amended, be passed on third and final consideration.

WEDNESDAY, MAY 22, 2002 – EIGHTY-EIGHTH LEGISLATIVE DAY

Rep. U. Jones moved that Senate Bill No. 3020 be reset for the Regular Calendar on May 29, 2002, which motion prevailed.

House Bill No. 3281 -- Williamson County - Pursuant to local request, authorizes Franklin Special School District to levy annual property tax through year 2019 for purpose of paying principal, interest, and redemption premiums on bonds and other indebtedness of district. Amends Chapter 11 of the Private Acts of 1999. by *Casada. (SB3235 by *Blackburn)

Further consideration of House Bill No. 3281 previously considered on May 15, 2002, at which time it was objected to on the Consent Calendar and reset for today's Regular Calendar.

Rep. Casada moved that **House Bill No. 3281** be passed on third and final consideration, which motion prevailed by the following vote:

Ayes	91
Noes	0
Present and not voting	1

Representatives voting aye were: Armstrong, Arriola, Baird, Beavers, Bittle, Black, Bone, Boyer, Briley, Brooks, Buck, Bunch, Buttry, Caldwell, Casada, Chumney, Clem, Cole (Carter), Cole (Dyer), Cooper, Curtiss, Davidson, Davis (Washington), Davis (Cocke), DeBerry J, DeBerry L, Dunn, Ferguson, Fitzhugh, Ford, Fowlkes, Fraley, Garrett, Godsey, Goins, Hagood, Hargett, Hargrove, Harwell, Head, Hood, Johnson, Kent, Kernell, Kisber, Langster, Lewis, Maddox, McCord, McDaniel, McDonald, McKee, McMillan, Miller, Montgomery, Mumpower, Newton, Odom, Overbey, Patton, Phillips, Pinion, Pleasant, Pruitt, Rhinehart, Ridgeway, Rinks, Roach, Rowland, Sands, Sargent, Scroggs, Sharp, Shaw, Shepard, Stanley, Tidwell, Tindell, Todd, Towns, Turner (Hamilton), Turner (Davidson), Vincent, Walker, West, Westmoreland, White, Whitson, Windle, Winningham, Wood -- 91.

Representatives present and not voting were: Givens -- 1.

A motion to reconsider was tabled.

***House Bill No. 2901** -- Teachers, Principals and School Personnel - Revises supplement pay provisions under career ladder program; rewrites provisions regarding additional duties of career level teachers; empowers department of education to allow LEA to develop plans for use of extended contract money on enrichment and remediation for students performing below proficiency. - TCA Title 49, Chapter 5, Parts 50 and 52. by *Scroggs. (SB2948 by *Atchley, *McNally)

Further consideration of House Bill No. 2901 previously considered on May 15, 2002, at which time it was reset for today's Calendar.

BILL RE-REFERRED

Rep. Scroggs moved that House Bill No. 2901 be re-referred to the House Calendar and Rules Committee, which motion prevailed.

REGULAR CALENDAR, CONTINUED

***House Bill No. 3125** -- Gambling - Exempts pinball machines manufactured before 1980 from prohibition against gambling. Amends TCA Title 39, Chapter 17. by *Armstrong. (SB3025 by *Haun)

Further consideration of House Bill No. 3125 previously considered on April 24, 2002, at which time the bill failed to receive a Constitutional majority, May 8, 2002 and May 15, 2002, at which time it was reset for today's Calendar.

Rep. Armstrong requested that House Bill No. 3125 be moved to the heel of the Calendar.

***House Bill No. 3186** -- Safety, Dept. of - Requires department to review driver license application and examination provisions in view of increased homeland security and report findings and recommendations to House Transportation Committees. Amends TCA Title 55, Chapter 50, Part 3. by *Maddox, *Odom, *Shepard, *Turner (Davidson), *Jones, S., *Cole (Dyer), *Harwell, *Hood, *Bowers. (SB3139 by *Herron, *Trail)

Further consideration of House Bill No. 3186 previously considered on May 15, 2002, at which time it was reset for today's Calendar.

On motion, House Bill No. 3186 was made to conform with **Senate Bill No. 3139**; the Senate Bill was substituted for the House Bill.

Rep. Maddox moved that Senate Bill No. 3139 be passed on third and final consideration.

On motion, Rep. Ridgeway withdrew Transportation Committee Amendment No. 1.

Rep. Odom moved adoption of Amendment No. 2 as follows:

Amendment No. 2

AMEND Senate Bill No. 3139 by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 55-50-321(c), is amended by deleting subdivision (1)(B) in its entirety and by substituting instead the following:

(1)(B) Any applicant who does not have, or who states that the applicant has never been issued, a social security number required by subdivision (c)(1)(A) shall complete an affidavit, under penalty of perjury, affirming that the applicant has never been issued a social security number and shall submit either an original or certified copy of one (1) of the following:

(i) A birth certificate issued by Tennessee, another state or a possession, territory or commonwealth of the United States; or

(ii) Documentation issued by the United States immigration and naturalization service authorizing the applicant to be in the United States.

SECTION 2. Tennessee Code Annotated, Section 55-50-336(a), is amended by adding the following language as a new, appropriately designated subdivision:

(3) Notwithstanding any provision of law to the contrary, every applicant for a photo identification license shall provide a social security number, a birth certificate issued in accordance with § 55-50-321(c)(1)(B)(i), or documentation issued by the immigration and naturalization service authorizing the applicant to be in the United States.

SECTION 3. The commissioner of safety is authorized to promulgate rules and regulations to effectuate the provisions of this act.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.

Rep. Turner (Davidson) moved adoption of Amendment No. 1 to Amendment No. 2 as follows:

Amendment No. 1 to 2

AMEND Senate Bill No. 3139 by adding the following new section immediately preceding the last section and by renumbering the subsequent section accordingly:

SECTION _____. Tennessee Code Annotated, Title 55, Chapter 50, Part 3, is amended by adding the following language as a new, appropriately designated section:

Section _____. It is an offense punishable as a Class E felony for any person to employ a person who does not submit with the application for employment either:

(1) A driver license or photo identification card issued by the state of Tennessee or a valid driver license issued by another state or a possession, territory or commonwealth of the United States; or

(2) Documentation issued by the United States immigration and naturalization service authorizing the applicant to be in the United States.

Rep. Turner (Davidson) moved that Amendment No. 1 to Amendment No. 2 be withdrawn, which motion prevailed.

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After further debate, Rep. Turner (Davidson) moved that Amendment No. 2 be tabled, which motion failed by the following vote:

Ayes	34
Noes	61

Representatives voting aye were: Armstrong, Bowers, Boyer, Briley, Brooks, Brown, Buck, Chumney, Cooper, DeBerry L, Fowlkes, Head, Hood, Jones U, Kernell, Kisber, Maddox, McDaniel, Miller, Phelan, Phillips, Pinion, Rhinehart, Ridgeway, Shepard, Tindell, Towns, Turner (Hamilton), Turner (Shelby), Turner (Davidson), Vincent, Walker, White, Mr. Speaker Naifeh -- 34.

Representatives voting no were: Arriola, Baird, Beavers, Bittle, Black, Bone, Bunch, Buttry, Caldwell, Casada, Clem, Cole (Carter), Cole (Dyer), Curtiss, Davidson, Davis (Washington), Dunn, Ferguson, Fitzhugh, Ford, Fraley, Garrett, Givens, Godsey, Goins, Hagood, Hargett, Hargrove, Harwell, Johnson, Kent, Langster, Lewis, McCord, McDonald, McKee, McMillan, Montgomery, Mumpower, Newton, Odom, Overbey, Patton, Pleasant, Pruitt, Rinks, Rowland, Sands, Sargent, Scroggs, Sharp, Shaw, Stanley, Tidwell, Todd, West, Westmoreland, Whitson, Windle, Winningham, Wood -- 61.

Rep. Maddox moved that Senate Bill No. 3139 be reset for the Regular Calendar on May 29, 2002, which motion prevailed.

House Bill No. 1036 -- Employees, Employers - Authorizes police department employee to request monthly payroll deduction for membership dues in employee association; requires political subdivision to comply with request if 10 percent of all employees belong to association. Amends TCA Title 7, Chapter 51, Part 2. by *West. (*SB817 by *Davis L)

Further consideration of House Bill No. 1036 previously considered on May 8, 2002 and May 15, 2002, at which time it was reset for today's Calendar.

Rep. West moved that House Bill No. 1036 be reset for the Regular Calendar on May 29, 2002, which motion prevailed.

House Bill No. 2808 -- Workers' Compensation - Defines mental injury for workers' compensation law. Amends TCA Title 50, Chapter 6. by *Cole (Dyer), *Bowers. (*SB2568 by *Clabough)

Further consideration of House Bill No. 2808 previously considered on April 10, 2002, April 17, 2000, April 24, 2002, May 8, 2002 and May 15, 2002, at which time it was reset for today's Calendar.

Rep. Cole (Dyer) requested that House Bill No. 2808 be moved to the heel of the Calendar.

***House Bill No. 3232** -- Criminal Offenses - Makes act of terrorism and possession of biological or chemical warfare agents crime; makes act of terrorism aggravating factor for purposes of imposing death penalty; enhances criminal penalties for other activities relating to terrorism or hoaxes. Amends TCA Title 3; Title 4; Title 5; Title 6; Title 7; Title 9; Title 10; Title 11; Title 12; Title 13; Title 16; Title 17; Title 18; Title 19; Title 20; Title 21; Title 22; Title 23; Title 24; Title 28; Title 29; Title 33; Title 37; Title 38; Title 39; Title 40; Title 41; Title 42; Title 43; Title 45; Title 50; Title 53; Title 54; Title 55; Title 56; Title 57; Title 58; Title 59; Title 60; Title 63; Title 64; Title 65; Title 66; Title 67; Title 68; Title 69 and Title 71. by *Kisber, *Newton, *Cole (Carter), *Kent. (SB3192 by *Clabough)

Rep. Kisber moved that House Bill No. 3232 be passed on third and final consideration.

Rep. Buck moved adoption of Judiciary Committee Amendment No. 1 as follows:

Amendment No. 1

AMEND House Bill No. 3232 by deleting SECTION 9 in its entirety and renumbering remaining Sections accordingly.

On motion, Judiciary Committee Amendment No. 1 was adopted.

Rep. Buck moved adoption of Judiciary Committee Amendment No. 2 as follows:

Amendment No. 2

AMEND House Bill No. 3232 by adding the following new section immediately preceding the last section and by renumbering the subsequent section accordingly:

SECTION ____ Tennessee Code Annotated, Section 38-3-120, is amended by adding the following new, appropriately designated subsection:

(j) The provisions of subsections (a) through (h) shall apply to air carriers holding an Air Carrier Certificate issued under 14 C.F.R. Part 119 and operating under 14 C.F.R. Part 121, or to the corporate parent of such entities, either of which shall have the same rights, authority and limitations as TVA possesses with regard to the appointment of peace officers, known under this section as Transportation Security Officers. The following shall apply to Transportation Security Officers:

(1) The air carrier or the parent of such entity employing and designating Transportation Security Officers shall own or lease property, and employ persons within the State of Tennessee;

(2) Only personnel of such air carrier, or its parent, who are designated as Transportation Security Officers by such air carrier shall receive appointments;

(3) Each Transportation Security Officer appointed or designated by air carriers holding an Air Carrier Certificate under 14 C.F.R. Part 119 and operating under 14 C.F.R. Part 121, or the corporate parent of such entities, shall possess all of the powers of a peace officer, described in this statute, including the power to make arrests for public offenses committed against employees or agents or against the property of the air carrier or its corporate parent and, while in pursuit of a person fleeing after committing such an offense, may pursue the person and make arrests. Additionally, such officers shall possess authority to carry weapons for the reasonable purposes of their offices and while in the performance of their assigned duties. Notwithstanding any provision of law to the contrary, the authorities, responsibilities and liabilities of such officers shall be limited as provided for under this section.

(4) Such air carrier, or the parent of such entity, and any such personnel employed by such carrier shall comply with all requirements of federal law pertaining to security operations associated with air carriers.

(5) Transportation Security Officers appointed under this section must complete appropriate initial and recurrent law enforcement training substantially equivalent to the requirements of the Tennessee Peace Officer Standards and Training Commission.

Rep. Buck moved adoption of Amendment No. 1 to Amendment No. 2 as follows:

Amendment No. 1 to 2

AMEND House Bill No. 3232 by adding the following new subsection (j)(6) to the amendatory language of SECTION ____, added by House Amendment # 2 (01367129):

(6) Any air carrier qualifying under the provisions of this subsection shall, at the time of the first appointment of transportation security officers, notify the airport proprietors of the airports served by the air carrier of the appointment of such officers, and the air carrier shall comply with the security plans of each airport with respect to the carrying of arms by such officers.

On motion, Amendment No. 1 to Amendment No. 2 was adopted.

Rep. Buck moved that Amendment No. 2 as amended, be adopted which motion prevailed.

Rep. Buck moved adoption of Judiciary Committee Amendment No. 3 as follows:

Amendment No. 3

AMEND House Bill No. 3232 by deleting subsection (c) from the amendatory Section 39-13-803 of Section 1 of the printed bill and by substituting instead the following language:

(c) No university, research institution, private company, individual, hospital, or other health care facility shall be subject to this part for actions taken in furtherance of objectives undertaken for a lawful purpose provided that such actions are taken in connection with scientific or public health research or are necessary for therapeutic or clinical purposes and, as required, are licensed or registered with the Centers for Disease Control and Prevention pursuant to the Code of Federal Regulations or other applicable authorities.

On motion, Judiciary Committee Amendment No. 3 was adopted.

Rep. Buck moved adoption of Judiciary Committee Amendment No. 4 as amended as follows:

Amendment No. 4

AMEND House Bill No. 3232 by adding the following new section immediately preceding the last section and by renumbering the subsequent section accordingly:

SECTION ____ Tennessee Code Annotated, Title 40, Chapter 17, Part 1, is amended by adding the following as a new, appropriately designated section:

40-17-1__.

(a) The following procedure shall be employed when a law enforcement officer, as defined in §39-11-106, seeks to obtain a subpoena for the production of books, papers, records, documents, tangible things, or information and data electronically stored for the purpose of establishing, investigating or gathering evidence for the prosecution of a criminal offense.

(b) If the officer has reason to believe that a criminal offense has been committed or is being committed and that requiring the production of documents or information is necessary to establish who committed or is committing the offense or to aid in the investigation and prosecution of the person or persons believed to have committed or believed to be committing the offense, the officer shall prepare an affidavit in accordance with subsection (c).

(c) An affidavit in support of a request to compel the production of books, papers, records, documents, tangible things, or information and data electronically stored shall state with particularity the following:

(1) A statement that a specific criminal offense has been committed or is being committed and the nature of such offense;

(2) The articulable reasons why the law enforcement officer believes the production of the documents requested will materially assist in the investigation of the specific offense committed or being committed;

(3) The custodian of the documents requested and the person, persons or corporation about whom the documents pertain;

(4) The specific documents requested to be included in the subpoena; and

(5) The nexus between the documents requested and the criminal offense committed or being committed.

(d)(1) Upon preparing the affidavit, the law enforcement officer shall submit it to either a judge of a court of record or a general sessions judge who serves the officer's county of jurisdiction. The judge shall examine the affidavit and may examine the affiants under oath. The judge shall grant the request for a subpoena to produce the documents requested if the judge finds that the affiants have presented a reasonable basis for believing that:

(A) A specific criminal offense has been committed or is being committed;

(B) Production of the requested documents will materially assist law enforcement in the establishment or investigation of such offense;

(C) There exists a clear and logical nexus between the documents requested and the offense committed or being committed; and

(D) The scope of the request is not unreasonably broad or the documents unduly burdensome to produce.

(2) If the judge finds that all of the criteria set out in subsection (d)(1) exist as to some of the documents requested but not all of them, the judge may grant the subpoena as to the documents that do but deny it as to the ones that do not.

(3) If the judge finds that all of the criteria set out in subsection (d)(1) do not exist as to any of the documents requested, the judge shall deny the request for subpoena.

(e) The affidavit filed in support of any request for the issuance of a subpoena pursuant to this section shall be filed with and maintained by the court. If a subpoena is issued as the result of such an affidavit, such affidavit shall be kept under seal by the judge until a copy is requested by the district attorney general, criminal charges are filed in the case, or the affidavit is ordered released by a court of record for good cause.

(f) A subpoena granted pursuant to this section by a judge of a court of record shall issue to any part of the state and shall command the person, or designated agent for service of process, to whom it is directed to produce any books, papers, records, documents, tangible things, or information and data electronically stored that is specified in such subpoena, to the law enforcement officer and at such reasonable time and place as is designated in the subpoena. A subpoena granted pursuant to this section by a judge of a court of general sessions shall in all respects be like a subpoena granted by the judge of a court of record but shall issue only within the county in which such sessions judge has jurisdiction. The court shall prepare or cause to be prepared the subpoena and it shall describe the specific materials requested and set forth the date and manner the materials are to be delivered to the officer.

(g) If the subpoena is issued by a judge of a court of record, it may be served by the officer in any county of the state by personal service, registered mail, or by any other means with the consent of the person named in the subpoena. If the subpoena is issued by a judge of a general sessions court it shall be served by an officer with jurisdiction in the county of the issuing judge but may be served by personal service, registered mail, or by any other means with the consent of the person named in the subpoena. The officer shall maintain a copy of the subpoena and endorse thereon the date and manner of service as proof thereof.

(h) No person shall be excused from complying with a subpoena for the production of documentary evidence issued pursuant to this section on the ground that production of the requested materials may tend to incriminate such person. Any person claiming such privilege against self incrimination must assert such claim before the court issuing the subpoena and before the time designated for compliance therewith. If the district attorney general thereafter certifies to the court that the interests of justice demands the production of the requested materials for which the claim of privilege is asserted, then the court shall order the production of such materials and no such individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning the requested materials the person was compelled to produce. If the person fails to assert the privilege against self-incrimination, such person may raise this issue later but will not be entitled to immunity from prosecution.

(i) No subpoena for the production of documentary evidence authorized by this section shall be directed to, or served upon, any defendant, or his counsel, to a criminal action in this state.

(j) If any person without cause refuses to produce the requested materials within the time and manner designated for compliance by the issuing judge, the district attorney may file a motion for civil contempt with the court with such motion and show cause order being served upon the person. Such order shall designate a time and place for a hearing on the merits. If at the hearing the court finds that the person has willfully refused to produce the requested materials, the court may find that the person is in civil contempt and may assess sanctions accordingly including incarcerating the person with or without bond being set until compliance with the subpoena is satisfied. If the person fails to appear for such hearing, the court may issue a writ of attachment for said person.

(k) A person to whom a subpoena is directed may file a motion to quash or modify the subpoena upon a showing that compliance would be unreasonable or oppressive. Such person shall file any such motion stating an objection to the subpoena with the clerk of the court for the issuing judge within seven (7) days of service of the subpoena. The filing of such motion shall stay all proceedings pending the outcome of a hearing before the issuing judge. The judge shall conduct the hearing within seven (7) days of the filing of the motion.

Rep. Buck moved adoption of Amendment No. 1 to Amendment No. 4 as follows:

Amendment No. 1 to 4

AMEND House Bill No. 3232 by adding the following as a new subsection (l) at the end of the amendatory language of House Judiciary Committee Amendment #4:

(l) Notwithstanding the above subsections, a subpoena shall also comply with the provisions of the Financial Records Privacy Act, Tennessee Code Annotated, Title 45, Chapter 10, as to any records or persons covered by such act.

On motion, Amendment No. 1 to Amendment No. 4 was adopted.

Rep. Buck moved that Amendment No. 4 as amended, be adopted which motion prevailed.

Rep. Buck moved adoption of Judiciary Committee Amendment No. 5 as follows:

Amendment No. 5

AMEND House Bill No. 3232 by adding the following new section immediately preceding the last section and by renumbering the subsequent section accordingly:

SECTION ____ Tennessee Code Annotated, Section 10-7-504(a), is hereby amended by adding the following new, appropriately designated subdivision:

(20)(A) The following records shall be treated as confidential and shall not be open for public inspection:

(i) Records that would allow a person to identify areas of structural or operational vulnerability of a utility service provider or that would permit unlawful disruption to, or interference with, the services provided by a utility service provider;

(ii) All contingency plans of a governmental entity prepared to respond to or prevent any violent incident, bomb threat, ongoing act of violence at a school or business, ongoing act of violence at a place of public gathering, threat involving a weapon of mass destruction, or terrorist incident.

(B) Documents concerning the cost of governmental utility property, the cost of protecting governmental utility property, the cost of identifying areas of structural or operational vulnerability of a governmental utility, the cost of developing contingency plans for a governmental entity, and the identity of vendors providing goods or services to a governmental entity in connection with the foregoing shall not be confidential. However, any documents relating to these subjects shall not be made available to the public unless information that is confidential under this subsection or any other provision of this chapter has been redacted or deleted from the documents.

(C) As used in this subdivision:

(i) "Governmental entity" means the state of Tennessee or any county, municipality, city or other political subdivision of the state of Tennessee;

(ii) "Governmental utility" means a utility service provider that is also a governmental entity; and

(iii) "Utility service provider" means any entity, whether public or private, that provides electric, gas, water, sewer or telephone service, or any combination of the foregoing, to citizens of the State of Tennessee, whether or not regulated by the Tennessee Regulatory Authority.

On motion, Judiciary Committee Amendment No. 5 was adopted.

Rep. Buck moved adoption of Judiciary Committee Amendment No. 6 as follows:

Amendment No. 6

AMEND House Bill No. 3232 by adding the following new section immediately preceding the last section and by renumbering the subsequent section accordingly:

SECTION _____. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

On motion, Judiciary Committee Amendment No. 6 was adopted.

Rep. Kisber moved adoption of Amendment No. 7 as follows:

Amendment No. 7

AMEND House Bill No. 3232 by deleting Section 8 of the bill and by substituting instead the following language:

SECTION 8. Tennessee Code Annotated, Section 47-18-104(b), is amended by adding the following new subdivision:

(34) Unreasonably raising prices or unreasonably restricting supplies of essential goods, commodities or services in direct response to a crime, act of terrorism, war, or natural disaster, regardless of whether such crime, act of terrorism, war, or natural disaster occurred in the state of Tennessee.

On motion, Amendment No. 7 was adopted.

Rep. Kisber moved that **House Bill No. 3232**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes	98
Noes	0

Representatives voting aye were: Armstrong, Arriola, Baird, Beavers, Bittle, Black, Bone, Bowers, Boyer, Briley, Brooks, Brown, Buck, Bunch, Buttry, Caldwell, Casada, Chumney, Clem, Cole (Carter), Cole (Dyer), Cooper, Curtiss, Davidson, Davis (Washington), Davis (Cocke), DeBerry J, DeBerry L, Dunn, Ferguson, Fitzhugh, Ford, Fowlkes, Fraley, Garrett, Givens, Godsey, Goins, Hagood, Hargett, Hargrove, Harwell, Head, Hood, Johnson, Jones U, Kent, Kernell, Kisber, Langster, Lewis, Maddox, McCord, McDaniel, McDonald, McKee, McMillan, Miller, Montgomery, Mumpower, Newton, Odom, Overbey, Patton, Phelan, Phillips, Pinion, Pleasant, Pruitt, Rhinehart, Ridgeway, Rinks, Roach, Rowland, Sands, Sargent, Scroggs, Sharp, Shaw, Shepard, Stanley, Tidwell, Tindell, Todd, Towns, Turner (Hamilton), Turner (Shelby), Turner (Davidson), Vincent, Walker, West, Westmoreland, White, Whitson, Windle, Winningham, Wood, Mr. Speaker Naifeh -- 98.

A motion to reconsider was tabled.

***House Bill No. 247** -- School Transportation - Specifies requirements for transporting special-needs or medically-fragile school students. Amends TCA Title 49, Chapter 6, Part 21. by *Caldwell. (SB734 by *Graves)

Rep. Caldwell moved that House Bill No. 247 be passed on third and final consideration.

Rep. Kisber moved adoption of Finance, Ways and Means Committee Amendment No. 1 as follows:

Amendment No. 1

AMEND House Bill No. 247 by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 49-6-2114, is amended by deleting subsection (a) in its entirety and by redesignating subsection (b) to be subsection (a).

Section 49-6-2114 is further amended by adding a new subsection (b) as follows:

(b)(1) In addition to the provisions of subsection (a), each school district or other entity transporting either special needs children or medically fragile children shall comply with the following requirements:

(A) Assure that personnel involved in the transport of medically fragile or other students at higher risk for health or safety concerns receive initial training and ongoing follow-up training to address general and specific health and safety concerns and procedures to follow in the event of a health or safety situation or emergency.

(B) Have clearly stated policies and procedures for responding to various health and safety situations or emergencies that might arise in the course of transporting students with special needs.

(C) Assure that buses or other vehicles used to transport medically fragile students are equipped or have immediate access to two-way radios, cellular phones or other means of communicating with school and emergency medical services in the event of a health or safety situation or emergency.

(D) Assure that buses or other vehicles used to transport medically fragile or other special needs students are equipped with basic first aid kits and supplies that would be available to drivers or aides to administer interventions prior to the arrival of emergency medical services personnel.

(2) Each school district or other entity transporting either special needs children or medically fragile children is urged to provide vehicles equipped with working air conditioners and heaters when transporting medically fragile students and students whose medical or developmental status puts them at risk for health problems due to extreme temperatures. This recommendation applies to vehicles purchased after July 31, 2002.

SECTION 2. This act shall take effect July 1, 2002, the public welfare requiring it.

On motion, Finance, Ways and Means Committee Amendment No. 1 was adopted.

Rep. Caldwell moved that **House Bill No. 247**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes97
Noes.....0

Representatives voting aye were: Armstrong, Arriola, Baird, Beavers, Bittle, Black, Bone, Bowers, Boyer, Briley, Brooks, Brown, Buck, Buttry, Caldwell, Casada, Chumney, Clem, Cole (Carter), Cole (Dyer), Cooper, Curtiss, Davidson, Davis (Washington), Davis (Cocke), DeBerry J, DeBerry L, Dunn, Ferguson, Fitzhugh, Ford, Fowikes, Fraley, Garrett, Givens, Godsey, Goins, Hagood, Hargett, Hargrove, Harwell, Head, Hood, Johnson, Jones U, Kent, Kernell, Kisber, Langster, Lewis, Maddox, McCord, McDaniel, McDonald, McKee, McMillan, Miller, Montgomery, Mumpower, Newton, Odom, Overbey, Patton, Phelan, Phillips, Pinion, Pleasant, Pruitt, Rhinehart, Ridgeway, Rinks, Roach, Rowland, Sands, Sargent, Scroggs, Sharp, Shaw, Shepard, Stanley, Tidwell, Tindell, Todd, Towns, Turner (Hamilton), Turner (Shelby), Turner (Davidson), Vincent, Walker, West, Westmoreland, White, Whitson, Windle, Winningham, Wood, Mr. Speaker Naifeh -- 97.

A motion to reconsider was tabled.

***House Bill No. 2450** -- Controlled Substances - Enacts "Controlled Substance Monitoring Act of 2002." Amends TCA Title 53, Chapter 10. by *Shepard, *Tidwell, *Black, *Caldwell. (SB2534 by *McNally, *Crowe, *Henry, *Rochelle, *Carter)

On motion, House Bill No. 2450 was made to conform with **Senate Bill No. 2534**; the Senate Bill was substituted for the House Bill.

Rep. Shepard moved that Senate Bill No. 2534 be passed on third and final consideration.

Rep. Kernell moved adoption of Government Operations Committee Amendment No. 1 as follows:

Amendment No. 1

AMEND Senate Bill No. 2534 by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 53, Chapter 10, is amended by deleting Part 3 in its entirety and by substituting instead the following:

53-10-301. This part shall be known and may be cited as the "Controlled Substance Monitoring Act of 2002".

53-10-302. As used in this part:

(1) "Board" means the board of pharmacy created in Tennessee Code Annotated, Title 63, Part 10;

(2) "Commissioner" means the commissioner of commerce and insurance;

(3) "Committee" means the controlled substance database advisory committee created in this part;

(4) "Database" means the controlled substance database created in this part;

(5) "Department" means the department of commerce and insurance;

(6) "Dispense" means to physically deliver a controlled substance covered by this chapter to any person, institution or entity with the intent that it be consumed away from the premises in which it is dispensed. It does not include the act of writing a prescription by a practitioner to be filled at a pharmacy licensed by the board; and

(7) "Dispenser" means any health care practitioner who has authority to dispense controlled substances, pharmacists, and pharmacies that dispense to any address within this state.

53-10-303. (a) There is created the controlled substance database advisory committee. The committee members shall be:

(1) The executive director of the board of pharmacy, who shall serve as database manager;

(2) The director of the department of health's division of health-related boards;

(3) The executive director of the board of medical examiners;

(4) One (1) of the governor-appointed and licensed members of each of the following health care professional licensure boards or committees to be chosen by the licensing board or committee:

(A) The board of medical examiners;

(B) The board of osteopathic examination;

(C) The board of dentistry;

(D) The board of registration in podiatry;

(E) The optometry board;

(F) The board of veterinary medical examiners;

(G) The board of nursing;

(H) The board of medical examiners' committee for physician assistants; and

(I) The board of pharmacy; and

(5) One (1) of the members of the board of pharmacy and one (1) of the members of the board of medical examiners who were appointed to those boards to represent the general public. The boards shall choose those representatives.

(b) The committee shall have a chair and vice-chair, who shall be elected annually from its members.

(c) The committee shall meet at least annually and as often as deemed necessary either at the call of the chair or upon request of at least three (3) members of the committee. A quorum for purposes of official actions by the committee shall be seven (7) members.

(d) The members of the committee chosen to serve by the individual licensure boards and committees, while serving on this committee, shall be deemed to be performing official duties as members of their original board or committee and shall be entitled to the same per diem and travel reimbursements as they would receive for performing their duties for their original board or committee. The member's original board or committee shall pay those per diems and travel reimbursements.

(e) At all times, except when considering, reviewing, discussing, advising or taking action in reference to specifically named individuals or dispensers identified from information contained in, or reported to the database, the committee shall be subject to the provisions of Tennessee Code Annotated, Title 8, Chapter 44, Part 1.

(f) The commissioner of commerce and insurance shall have the authority to promulgate all rules and regulations, pursuant to the Uniform Administrative Procedures Act, necessary for implementation of the provisions of this part. The commissioner of commerce and insurance shall promulgate rules regarding:

- (1) Establishing, maintaining, and operating the database;
- and
- (2) Access to the database and how access is obtained;
- (3) Control and dissemination of information contained in the database.

(g) The committee shall advise the commissioner of commerce and insurance with respect to any contemplated rulemaking under this part. The committee may make formal recommendations to the commissioner of commerce and insurance.

53-10-304. (a) There is created within the department a controlled substance database to be attached administratively and for purposes of staffing to the board of pharmacy. The director of the board of pharmacy shall be responsible for determining staffing.

(b) The board and the committee shall establish, administer, maintain and direct the functioning of the database in accordance with this part. The board of pharmacy upon concurrence of the committee may, under state procurement laws, contract with another state agency or private entity to establish, operate, or maintain the database. The Board of Pharmacy upon concurrence of the committee shall determine whether to operate the database within the board of pharmacy or contract with another entity to operate the database, based on an analysis of costs and benefits.

(c) The purpose of the database is to assist in research, statistical analysis and the education of health care practitioners concerning patients who, by virtue of their conduct in acquiring controlled substances, may require counseling or intervention for substance abuse, by collecting and maintaining data as described in this part regarding all controlled substance in Schedules II, III and IV dispensed in this state.

(d) The data required by this part shall be submitted in compliance with this part to the committee by any practitioner, or person under the supervision and control of the practitioner, pharmacist or pharmacy who dispenses a controlled substance contained in Schedules II, III and IV. The reporting requirement shall not apply for the following:

- (1) A drug administered directly to a patient;
- (2) Any drug dispensed by a licensed health care facility provided that the quantity dispensed is limited to an amount adequate to treat the patient for a maximum of forty-eight (48) hours;
- (3) Any drug sample dispensed; or
- (4) Any facility that is registered by the United States Drug Enforcement Administration as a narcotic treatment program and is subject to the record keeping provisions of Title 21 CFR 1304.24.

53-10-305. (a) Each dispenser shall, regarding each controlled substance dispensed, submit to the committee all of the following information by a procedure and in a format established by the committee at least monthly within ten (10) days following the last day of each calendar month:

- (1) Name of the prescribing practitioner;
- (2) Date of the prescription;
- (3) Date the prescription was filled;
- (4) Name of the person for whom the prescription was written;
- (5) Positive identification of the person receiving the prescription, including the type of identification and any identifying numbers on the identification;
- (6) Name of the controlled substance;
- (7) Quantity of controlled substance prescribed;
- (8) Strength of controlled substance;
- (9) Quantity of controlled substance dispensed;
- (10) Dosage quantity and frequency as prescribed;
- (11) Name of pharmacy or practitioner dispensing the controlled substance;

(12) Name of pharmacist dispensing the controlled substance; and

(13) Other relevant information as required by committee rule.

(b) The board of pharmacy shall maintain the database in an electronic file or by other means established by the committee in such a manner as to not infringe on the legal use of controlled substances, and in such a manner as to facilitate use of the database for identification of:

(1) Prescribing practices and patterns of prescribing and dispensing controlled substances; and

(2) Individuals, facilities or entities receiving prescriptions for controlled substances from licensed practitioners, and who subsequently obtain dispensed controlled substances from a pharmacy in quantities or with a frequency inconsistent with generally recognized standards of dosage for that controlled substance, or by means of forged or otherwise false or altered prescriptions.

(c) (1) The committee shall by rule establish the electronic format in which the information required under this section shall be submitted to the committee and shall allow for waiver for individual dispensers for whom it would cause undue hardship.

(2) The committee shall ensure the database system records and maintains for reference:

(A) Identification of each person who requests or receives information from the database;

(B) The information provided to each person; and

(C) The date and time the information is requested or provided.

(d) The committee shall make rules to:

(1) Effectively enforce the limitations on access to the database as described in this chapter; and

(2) Establish standards and procedures to ensure accurate identification of individuals requesting information or receiving information from the database without a request.

53-10-306. (a) Information sent to, contained in, and reported from the database in any format is confidential and not subject to the provisions of Tennessee Code Annotated Title 10, Chapter 7, and not subject to subpoena or process of any kind issued from any court and shall be made available only as provided for in 53-10-308 and to the following persons, and in accordance with the limitations stated and committee rules:

(1) Personnel of the committee specifically assigned to conduct analysis or research;

(2) Authorized committee, board, or department members and personnel engaged in analysis of controlled substances prescription information as a part of the assigned duties and responsibilities of their employment;

(3) A licensed health care practitioner having authority to prescribe or dispense controlled substances, to the extent the information relates specifically to a current patient of the practitioner, to whom the practitioner has prescribed or dispensed or is prescribing or dispensing or considering prescribing or dispensing any controlled substance; or

(4) A licensed pharmacist having authority to dispense controlled substances to the extent the information relates specifically to a current patient to whom that pharmacist has dispensed, is dispensing or considering dispensing any controlled substance.

(b) Any information disseminated pursuant to subsection (a)(3) or (4) shall be sent under the auspices of the committee but shall be sent on the letterhead and under the authority of the licensing board that regulates the licensee who is the recipient and signed by the member of the committee representing that licensing board.

(c) Any licensed practitioner or pharmacist receiving information pursuant to subsections (a)(1) or (2) shall not disclose the information to any person other than:

(1) The patient to whom the information relates and then only for the purpose of adjusting the patient's treatment plans or counseling the patient to seek substance abuse treatment; and

(2) Other dispensers identified by the information and then only for the purposes of verifying the accuracy of the information.

(d) Any person who obtains or attempts to obtain information from the database by misrepresentation or fraud is guilty of a Class A misdemeanor.

(e) Any person who knowingly uses, releases, publishes, or otherwise makes available to any other person or entity any information submitted to, contained in, or obtained from the database for any purpose other than those specified in this part is guilty of a Class A misdemeanor.

53-10-307. (a) The failure of a dispenser to submit information to the database required under this part after the committee has submitted a specific written request for the information or when the committee determines the individual has a demonstrable pattern of failing to submit the information as required is grounds for the denial of licensure, renewal of licensure, or other disciplinary action against the dispenser before the licensing board with jurisdiction over the dispenser and for the committee to take the following actions:

(1) Recommend to the appropriate licensure board that it should refuse to issue a license to the individual;

(2) Recommend to the appropriate licensure board that it should refuse to renew the individual's license; and

(3) Recommend to the appropriate licensure board that it should commence disciplinary action against the licensee seeking revocation, suspension or other appropriate discipline including civil penalties.

(b) An individual or entity who has submitted information to the database in accordance with this part and in good faith shall not be subject to a suit for civil damages nor held civilly liable for having submitted the information.

(c) An individual or entity who in good faith disseminates information contained in, or derived from the database to the individuals authorized by this part to receive it in, the manner authorized by the part or rules promulgated pursuant thereto shall not be subject to a suit for civil damages nor held individually liable for having done so.

(d) No health care practitioner licensed by any board or committee shall be subject to licensure disciplinary action for submitting the information required by this part to the committee and the submission of the information shall not be deemed to be a breach of any confidentiality, ethical duty to a patient, or the sharing of any professional secret.

53-10-308. Notwithstanding any other provision of this part to the contrary, the committee may release confidential information from the database regarding practitioners, patients, or both to the following persons:

(a) A manager of any investigations or prosecution unit of a board, committee, or other governing body that licenses practitioners and is engaged in any investigation, an adjudication, or a prosecution of a violation under any state or federal law that involves a controlled substance.

(b) Before the committee releases confidential information under this section, the applicant must petition the committee for it, particularly describe the information required, and demonstrate to the committee that the applicant has reason to believe that a violation under any state or federal law that involves a controlled substance has occurred and that the requested information is reasonably related to the investigation, adjudication, or prosecution of the violation.

(c) No information may be released under this section until it has been reviewed by the committee, including a member of the committee who is licensed in the same profession as the prescribing or dispensing practitioner identified by the data, and until the committee, including that member, has certified that further investigation or prosecution is warranted and that release of the information is necessary to that continued investigation or prosecution.

53-10-309. The committee shall report annually on the outcome of the program with respect to its effect on distribution and abuse of controlled substances, including recommendations for improving control and prevention of the diversion of controlled substances in this state.

SECTION 2.

(a) Except as provided hereinafter, the department shall assess the board of pharmacy for the costs reasonably associated with providing the services and information pursuant to this act. Further, the department shall provide to the department of health all costs reasonably associated with the transmission of such services and information to the boards of providers regulated by the department of health and represented in this act.

(b) Notwithstanding any other provision of this act, initial, nonrecurring costs associated with the implementation of this act shall be funded from the reserve account of the board of pharmacy.

(c) Recurring costs shall be funded by the board of pharmacy (on a pro-rata basis according to the number of licensed pharmacists) and the participating health-related boards (on a pro-rata basis according to the number of each board's licensees having statutory authority to write prescriptions for controlled substances). All funds received by either the department or the department of health through contributions, donations or grant funds specifically designated for the controlled substance database program shall be applied to recurring costs.

SECTION 3. Tennessee Code Annotated, Section 4-29-225(a), is amended by adding a new item thereto, as follows:

() Controlled substance database advisory committee, created by § 53-10-303;

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. For purposes of convening the committee, setting up the database for receipt of data and for promulgating rules, this act shall take effect upon becoming law, the public welfare requiring it. For all other purposes, this act shall become effective January 1, 2003, the public welfare requiring it.

On motion, Government Operations Committee Amendment No. 1 was adopted.

Rep. Kernell moved adoption of Government Operations Committee Amendment No. 2 as follows:

Amendment No. 2

AMEND Senate Bill No. 2534 by deleting in the amendatory language of SECTION 1 the language:

53-10-306. (a) Information sent to, contained in, and reported from the database in any format is confidential and not subject to the provisions of Tennessee Code Annotated Title 10, Chapter 7, and not subject to subpoena or process of any kind issued from any court and shall be made available only to the following persons, and in accordance with the limitations stated and committee rules:

and substituting instead the language:

53-10-306. (a) Information sent to, contained in, and reported from the database in any format is confidential and not subject to the provisions of Tennessee Code Annotated, Title 10, Chapter 7, and not subject to subpoena and shall be made available only as provided for in § 53-10-308 and to the following persons, and in accordance with the limitations stated and rules promulgated pursuant to this part; except that the information shall be subject to production pursuant to an order of a circuit or criminal court in a criminal investigation or prosecution:

On motion, Government Operations Committee Amendment No. 2 was adopted.

WEDNESDAY, MAY 22, 2002 – EIGHTY-EIGHTH LEGISLATIVE DAY

Rep. Armstrong moved adoption of Health and Human Resources Committee Amendment No. 1 as House Amendment No. 3 as follows:

Amendment No. 3

AMEND Senate Bill No. 2534 As amended, by amending the House Government Operations Committee Amendment No. 1 by deleting in its entirety Tennessee Code Annotated, Section 53-10-305(a), and by substituting instead a new subsection (a), as follows:

(a) Each dispenser shall, regarding each controlled substance dispensed, submit to the committee all of the following information by a procedure and in a format established by the committee at least monthly within ten (10) days following the last day of each calendar month:

- (1) prescriber identifier;
- (2) dispensing date of controlled substance;
- (3) patient identifier;
- (4) controlled substance dispensed identifier;
- (5) quantity of controlled substance dispensed;
- (6) strength of controlled substance dispensed;
- (7) estimated days supply;
- (8) dispenser identifier; and
- (9) other relevant information as required by rule.

AND FURTHER AMEND by inserting in the amendment the following new language as subsection (b) in Tennessee Code Annotated, Section 53-10-305 and relettering the existing subsection (b) as subsection (c):

(b) A pharmacy dispenser that uses a computerized system to record information concerning the dispensing of controlled substances listed in schedule II, III, or IV shall submit the required information to the committee or its agent utilizing nationally recognized pharmacy telecommunications format standards;

AND FURTHER AMEND by deleting in the amendment the existing Tennessee Code Annotated, Section 53-10-306(a)(2), and by substituting instead the following:

(2) Authorized committee, board, or departments of health and commerce and insurance personnel engaged in analysis of controlled substances prescription information as a part of the assigned duties and responsibilities of their employment;

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On motion, Health and Human Resources Committee Amendment No. 1 as House Amendment No. 3 was adopted.

Rep. Armstrong moved adoption of Health and Human Resources Committee Amendment No. 2 as House Amendment No. 4 as follows:

Amendment No. 4

AMEND Senate Bill No. 2534 As amended, by deleting the following language added by House Government Operations Committee Amendment 2:

53-10-306 (a) Information sent to, contained in, and reported from the database in any format is confidential and not subject to the provisions of Tennessee Code Annotated, Title 10, Chapter 7, and not subject to subpoena and shall be made available only as provided for in § 53-10-308 and to the following persons, and in accordance with the limitations stated and rules promulgated pursuant to this part; except that the information shall be subject to production pursuant to an order of a circuit or criminal court in a criminal investigation or prosecution:

And by substituting instead the following language:

53-10-306. (a) Information sent to, contained in, and reported from the database in any format is confidential and not subject to the provisions of Tennessee Code Annotated Title 10, Chapter 7, and not subject to subpoena or process of any kind issued from any court and shall be made available only to the following persons, and in accordance with the limitations stated and committee rules:

On motion, Health and Human Resources Committee Amendment No. 2 as House Amendment No. 4 was adopted.

Rep. Buck moved adoption of Amendment No. 5 as follows:

Amendment No. 5

AMEND Senate Bill No. 2534 by deleting from subsection (a) of Section 53-10-306 of the amendatory language of SECTION 1 the language:

(a) Information sent to, contained in, and reported from the database in any format is confidential and not subject to the provisions of Tennessee Code Annotated Title 10, Chapter 7, and not subject to subpoena or process of any kind issued from any court and shall be made available only as provided for in 53-10-308 and to the following persons, and in accordance with the limitations stated and committee rules:

and substituting instead the following language:

(a) Information sent to, contained in, and reported from the database in any format is confidential and not subject to the provisions of Tennessee Code Annotated, Title 10, Chapter 7, and not subject to subpoena, except that the information shall be subject to production pursuant to an order of a circuit or criminal court in a criminal investigation or prosecution, and shall be made available only as provided for in § 53-10-308 and to the following persons, and in accordance with the limitations stated and rules promulgated pursuant to this part:

On motion, Amendment No. 5 was adopted.

Rep. Buck moved adoption of Amendment No. 6 as follows:

Amendment No. 6

AMEND Senate Bill No. 2534 by adding the following new subsection (b) to Section 53-10-306 of the amendatory language of SECTION 1 and by relettering present subsections accordingly:

(b) Notwithstanding the provisions of subsection (a) of this section to the contrary, upon the motion of any person to the judge of a court who has before it a case involving a child, such judge may compel the production of specified information contained in the database if the judge finds that production of such information would be in the best interests of the child.

On motion, Amendment No. 6 was adopted.

Rep. Shepard moved that **Senate Bill No. 2534**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes	97
Noes	0
Present and not voting	1

Representatives voting aye were: Armstrong, Arriola, Baird, Beavers, Bittle, Black, Bone, Bowers, Boyer, Briley, Brooks, Brown, Buck, Bunch, Buttry, Caldwell, Casada, Chumney, Cole (Carter), Cole (Dyer), Cooper, Curtiss, Davidson, Davis (Washington), Davis (Cocke), DeBerry J, DeBerry L, Dunn, Ferguson, Fitzhugh, Ford, Fowlkes, Fraley, Garrett, Givens, Godsey, Goins, Hagood, Hargett, Hargrove, Harwell, Head, Hood, Johnson, Jones U, Kent, Kernell, Kisber, Langster, Lewis, Maddox, McCord, McDaniel, McDonald, McKee, McMillan, Miller, Montgomery, Mumpower, Newton, Odom, Overbey, Patton, Phelan, Phillips, Pinion, Pleasant, Pruitt, Rhinehart, Ridgeway, Rinks, Roach, Rowland, Sands, Sargent, Scroggs, Sharp, Shaw, Shepard, Stanley, Tidwell, Tindell, Todd, Towns, Turner (Hamilton), Turner (Shelby), Turner (Davidson), Vincent, Walker, West, Westmoreland, White, Whitson, Windle, Winningham, Wood, Mr. Speaker Naifeh -- 97.

Representatives present and not voting were: Clem -- 1.

A motion to reconsider was tabled.

***House Bill No. 2105** -- Health Care - Provides for emergency administration of glucagon to students and school personnel by qualified school personnel. Amends TCA Title 49, Chapter 5 and Title 68, Chapter 140, Part 5. by *Black. (SB2525 by *Ramsey, *Cohen, *Cooper J, *Haun, *McNally, *Burks)

On motion, House Bill No. 2105 was made to conform with **Senate Bill No. 2525**; the Senate Bill was substituted for the House Bill.

Rep. Black moved that Senate Bill No. 2525 be passed on third and final consideration.

On motion, Rep. Armstrong withdrew Health and Human Resources Committee Amendment No. 1.

Rep. Kisber moved adoption of Finance, Ways and Means Committee Amendment No. 1 as House Amendment No. 2 as follows:

Amendment No. 2

AMEND Senate Bill No. 2525 by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 49-5-415, is amended by redesignating subsections (a)(1) – (6), (b), (c), and (d) to be subdivisions (a)(1)(A) – (F), (2), (3), and (4), respectively, and by adding a new subsection (b), as follows:

(b) In addition to the assistance with self-administration of medications provided for in subsection (a), school personnel who volunteer under no duress or pressure and who have been properly trained by a registered nurse employed or contracted by the local education agency may administer glucagon in emergency situations to a student based on that student's individual health plan (IHP). However, if a public school nurse is available and on site, the nurse shall provide this service to the student. The public school nurse employed or contracted by the local education agency shall be responsible for updating and maintaining each IHP. The department of health and the department of education shall jointly amend current "Guidelines for Use of Health Care Professionals and Health Procedures in a School Setting" to reflect the appropriate procedures for use by registered nurses in training volunteer school personnel to administer glucagon. The Board of Nursing must be afforded the opportunity to review and comment on the guidelines before they take effect and any training begins. The guidelines developed must be used uniformly by all local education agencies which choose to allow volunteer school personnel to administer glucagon. Training to administer glucagon shall be repeated annually and competencies shall be documented in the employee's personnel file. The provisions of subsection (a)(3) of this section regarding protection from liability shall apply also to the volunteers who provide services pursuant to this subsection and the registered nurses who provide their training.

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SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

On motion, Finance, Ways and Means Committee Amendment No. 1 as House Amendment No. 2 was adopted.

Rep. Brown moved the previous question, which motion prevailed.

Rep. Black moved that **Senate Bill No. 2525**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes	91
Noes	2
Present and not voting	3

Representatives voting aye were: Armstrong, Arriola, Baird, Beavers, Bittle, Black, Bone, Bowers, Boyer, Brown, Buck, Bunch, Buttry, Caldwell, Casada, Chumney, Clem, Cole (Carter), Cole (Dyer), Curtiss, Davidson, Davis (Washington), Davis (Cocke), DeBerry J, DeBerry L, Dunn, Ferguson, Fitzhugh, Ford, Fowlkes, Fraley, Garrett, Givens, Godsey, Goins, Hagood, Hargett, Hargrove, Harwell, Head, Hood, Johnson, Jones U, Kent, Kernell, Kisber, Langster, Lewis, Maddox, McCord, McDaniel, McDonald, McKee, McMillan, Miller, Montgomery, Mumpower, Newton, Odom, Overbey, Patton, Phelan, Pinion, Pleasant, Pruitt, Ridgeway, Rinks, Roach, Rowland, Sargent, Scroggs, Sharp, Shaw, Shepard, Stanley, Tidwell, Tindell, Todd, Towns, Turner (Shelby), Turner (Davidson), Vincent, Walker, West, Westmoreland, White, Whitson, Windle, Winningham, Wood, Mr. Speaker Naifeh -- 91.

Representatives voting no were: Phillips, Rhinehart -- 2.

Representatives present and not voting were: Brooks, Cooper, Turner (Hamilton) -- 3.

A motion to reconsider was tabled.

***House Bill No. 2431** -- Tort Liability - Extends from January 1, 2005, to January 1, 2007, date on which immunity for computer system failure due to date or time changes expires. Amends TCA Title 29, Chapter 20. by *Brown. (SB2518 by *Crutchfield)

Further consideration of House Bill No. 2431 previously considered on today's Calendar.

Rep. Brown moved that House Bill No. 2431 be reset for the Regular Calendar on May 29, 2002, which motion prevailed.

House Bill No. 2650 -- Education - Applies on state-wide basis the present authorization for a local education agency to enter into agreement with its local law enforcement agency to enforce compulsory attendance which is now limited to Shelby County. Amends TCA Section 49-6-3007. by *Turner (Hamilton), *Turner (Davidson), *Tindell, *Armstrong, *Jones U (Shelby), *Turner (Shelby). (*SB2145 by *Crutchfield, *Williams, Sen.)

Rep. Turner (Hamilton) moved that House Bill No. 2650 be passed on third and final consideration.

Rep. Bunch moved that Amendment No. 1 be withdrawn, which motion prevailed.

Rep. Winningham moved adoption of Education Committee Amendment No. 1 as amended as House Amendment No. 2 as follows:

Amendment No. 2

AMEND House Bill No. 2650 by redesignating Section 2 of the printed bill to be Section 3 and by adding the following new Section 2:

SECTION 2. Tennessee Code Annotated, Section 49-6-3007(i), is further amended by deleting the first sentence of subdivision (1) and substituting the following:

A local education agency may enter into an agreement with the local law enforcement agency serving the area of the LEA and the appropriate local government in that area to assist in the enforcement of compulsory attendance upon complying with the following conditions:

(A) Creation by the local school board of an advisory council to assist the board in formulating the agreement. The board shall include representatives of teachers, parents, administrators, and other community representatives.

(B) Receipt of input from neighborhood groups and other interested parties;

(C) At least one (1) public hearing on the proposed plan prior to its adoption by the board;

(D) Provisions for training teachers, principals, social workers, and other personnel involved in the schools in truancy issues;

(E) Provisions for assuring the training of involved law enforcement personnel in provisions of the truancy law, including categories of students to which the law does not apply, such as private school students or home school students;

(F) Inclusion in the agreement of safeguards to protect students from discriminatory or selective enforcement and to protect the civil rights of students and parents.

On motion, Education Committee Amendment No. 1 as amended as House Amendment No. 2 was adopted.

Rep. Turner (Hamilton) moved that **House Bill No. 2650**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

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Ayes	79
Noes	11
Present and not voting	2

Representatives voting aye were: Armstrong, Arriola, Baird, Beavers, Black, Bone, Boyer, Briley, Buck, Buttry, Caldwell, Casada, Chumney, Cole (Carter), Cole (Dyer), Curtiss, Davidson, Davis (Washington), Davis (Cocke), Ferguson, Fitzhugh, Ford, Fowlkes, Fraley, Garrett, Givens, Godsey, Hagood, Hargett, Hargrove, Harwell, Head, Hood, Johnson, Kent, Kisber, Langster, Lewis, Maddox, McCord, McDaniel, McDonald, McKee, McMillan, Miller, Montgomery, Mumpower, Newton, Odom, Overbey, Patton, Phelan, Phillips, Pinion, Pleasant, Pruitt, Rhinehart, Ridgeway, Rinks, Roach, Rowland, Sands, Sargent, Scroggs, Shaw, Shepard, Stanley, Tindell, Todd, Turner (Hamilton), Turner (Shelby), Walker, West, Westmoreland, White, Whitson, Windle, Winningham, Mr. Speaker Naifeh -- 79.

Representatives voting no were: Bowers, Brooks, Brown, Bunch, Clem, DeBerry L, Dunn, Goins, Jones U, Vincent, Wood -- 11.

Representatives present and not voting were: Bittle, Sharp -- 2.

A motion to reconsider was tabled.

CHAIR TO DEBERRY

Mr. Speaker Naifeh relinquished the Chair to Rep. DeBerry, Speaker pro tempore.

RECOGNITION IN THE WELL

Rep. Walker was recognized in the Well to introduce former State Representative Shirley Powell Duer, for remarks.

RESOLUTION READ

The Clerk read House Joint Resolution No. 799 honoring Representative Duer on her service in the Tennessee General Assembly.

House Joint Resolution No. 799 -- Memorials, Public Service - Representative Shirley Powell Duer. by *Walker .

REGULAR CALENDAR, CONTINUED

***House Bill No. 2840** -- Real Estate Agents and Brokers - Exempts vacation lodging services from requirement of placing funds derived from rental of their properties in escrow or trustee accounts and amends other provisions related to vacation lodging. Amends TCA Title 62, Chapter 13; Title 67, Chapter 4, Part 7; Title 67, Chapter 5, Part 9 and Title 67, Chapter 6. by *Cole (Dyer). (SB2918 by *Clabough)

Rep. Cole (Dyer) moved that House Bill No. 2840 be passed on third and final consideration.

Rep. Rhinehart moved adoption of Commerce Committee Amendment No. 1 as follows:

Amendment No. 1

AMEND House Bill No. 2840 by adding the following new section immediately preceding the last section and by renumbering the subsequent section accordingly:

SECTION _____. Tennessee Code Annotated, Section 62-13-104(b)(3)(C), is amended by adding the following language as a new third sentence:

The term "broker" as used in Rule 1260-2-.09 of the Rules of the Tennessee Real Estate Commission shall also mean "vacation lodging service" and a "vacation lodging service" shall have the same rights and responsibilities as a "broker" as that term is used in Rule 1260-2-.09.

AND FURTHER AMEND by deleting Section 4 of the printed bill and by substituting instead the following:

SECTION 4. Tennessee Code Annotated, Section 62-13-104(b)(3)(C), is amended by inserting the following sentence between the second and third sentences:

Funds derived from the rental of vacation properties owned by the vacation lodging service shall be exempted from the escrow or trustee account requirements, provided such funds shall not be co-mingled with funds derived from the rental of properties owned by others.

On motion, Commerce Committee Amendment No. 1 was adopted.

Rep. Cole (Dyer) moved that **House Bill No. 2840**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes	94
Noes	0

Representatives voting aye were: Armstrong, Arriola, Baird, Beavers, Bittle, Black, Bone, Bowers, Boyer, Briley, Brown, Buck, Bunch, Buttry, Caldwell, Casada, Chumney, Clem, Cole (Carter), Cole (Dyer), Cooper, Curtiss, Davidson, Davis (Washington), Davis (Cocke), DeBerry J, DeBerry L, Dunn, Ferguson, Fitzhugh, Ford, Fowlkes, Fraley, Garrett, Givens, Godsey, Goins, Hagood, Hargett, Hargrove, Harwell, Head, Hood, Johnson, Kent, Kernell, Kisber, Langster, Lewis, Maddox, McCord, McDaniel, McDonald, McKee, McMillan, Miller, Montgomery, Mumpower, Newton, Odum, Overbey, Patton, Phelan, Phillips, Pinion, Pleasant, Rhinehart, Ridgeway, Rinks, Roach, Rowland, Sands, Sargent, Scroggs, Sharp, Shaw, Shepard, Stanley, Tidwell, Tindell, Todd, Towns, Turner (Hamilton), Turner (Davidson), Vincent, Walker, West, Westmoreland, White, Whitson, Windle, Winningham, Wood, Mr. Speaker Naifeh -- 94.

A motion to reconsider was tabled.

WEDNESDAY, MAY 22, 2002 – EIGHTY-EIGHTH LEGISLATIVE DAY

House Bill No. 1318 -- Education, Higher - Reclassifies "individual" as "person" under Tennessee Baccalaureate Education System Trust (BEST) Act as one that purchases tuition units or makes contributions to account. Amends TCA Title 49, Chapter 7, Part 8. by *Davidson. (*SB898 by *Haynes)

On motion, House Bill No. 1318 was made to conform with **Senate Bill No. 898**; the Senate Bill was substituted for the House Bill.

Rep. Davidson moved that Senate Bill No. 898 be passed on third and final consideration.

On motion, Rep. Winningham withdrew Education Committee Amendment No. 1.

Rep. Davidson moved that Senate Bill No. 898 be reset for the Regular Calendar on May 29, 2002, which motion prevailed.

House Bill No. 1210 -- Utilities, Utility Districts - Limits disclosure of consumer records by municipal utilities. Amends TCA Title 10. by *Clem, *McCord, *Bunch. (*SB1304 by *Fowler)

Rep. Clem moved that House Bill No. 1210 be passed on third and final consideration.

Rep. Buck moved adoption of Judiciary Committee Amendment No. 1 as follows:

Amendment No. 1

AMEND House Bill No. 1210 by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 10-7-504(a), is amended by adding the following new subdivision (20):

(20)(A) For the purposes of subdivision (a)(20), the following terms shall have the following meaning:

(i) "Consumer" means any person, partnership, limited partnership, corporation, professional corporation, limited liability company, trust, or any other entity, or any user of a utility service.

(ii) "Municipal" and "Municipality" means a county, metropolitan government, incorporated city, town of the state, or utility district as created in Title 7, Chapter 82.

(iii) "Private Records" means a credit card number, social security number, tax identification number, financial institution account number, burglar alarm codes, security codes, and access codes.

(iv) "Utility" shall include any public electric generation system, electric distribution system, water storage or processing system, water distribution system, gas storage system or facilities related thereto, gas distribution system, wastewater system, telecommunications system, or any services similar to any of the foregoing.

(B) The private records of any utility shall be treated as confidential and shall not be open for inspection by members of the public.

(C) Information made confidential by this subsection shall be redacted wherever possible and nothing in this subsection shall be used to limit or deny access to otherwise public information because a file, document, or data file contains confidential information. For purposes of this section only, it shall be presumed that redaction of such information is possible. The entity requesting the records shall pay all reasonable costs associated with redaction of materials.

(D) Nothing in this subsection shall be construed to limit access to these records by law enforcement agencies, courts, or other governmental agencies performing official functions.

(E) Nothing in this subsection shall be construed to limit access to information made confidential under this subsection, when the consumer expressly authorizes the release of such information.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

On motion, Judiciary Committee Amendment No. 1 was adopted.

Rep. Clem moved that **House Bill No. 1210**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes	93
Noes	0

WEDNESDAY, MAY 22, 2002 – EIGHTY-EIGHTH LEGISLATIVE DAY

Representatives voting aye were: Armstrong, Arriola, Baird, Beavers, Bittle, Black, Bone, Bowers, Boyer, Briley, Brooks, Brown, Buck, Bunch, Buttry, Caldwell, Casada, Chumney, Clem, Cole (Carter), Cole (Dyer), Cooper, Curtiss, Davidson, Davis (Washington), Davis (Cocke), DeBerry L, Dunn, Ferguson, Fitzhugh, Ford, Fowlkes, Fraley, Garrett, Givens, Godsey, Goins, Hagood, Hargett, Hargrove, Harwell, Head, Hood, Johnson, Kent, Kernell, Kisber, Lewis, Maddox, McCord, McDaniel, McDonald, McKee, McMillan, Miller, Montgomery, Mumpower, Newton, Odom, Overbey, Patton, Phelan, Phillips, Pinion, Pleasant, Rhinehart, Ridgeway, Rinks, Roach, Rowland, Sands, Sargent, Scroggs, Sharp, Shaw, Shepard, Stanley, Tidwell, Tindell, Todd, Turner (Hamilton), Turner (Shelby), Turner (Davidson), Vincent, Walker, West, Westmoreland, White, Whitson, Windle, Winningham, Wood, Mr. Speaker Naifeh -- 93.

A motion to reconsider was tabled.

House Bill No. 2617 -- Education, Dept. of - Directs commissioner to expand and periodically update advisory guidelines for safe schools to include appropriate discussion of principles and procedures, as well as statutory and case analyses, to ensure that zero tolerance policies do not produce irrational outcomes. Amends TCA Section 49-1-214; Section 49-6-3401 and Section 49-6-4216. by *Towns. (*SB2237 by *Dixon)

Rep. Towns moved that **House Bill No. 2617** be passed on third and final consideration, which motion prevailed by the following vote:

Ayes	93
Noes	0
Present and not voting	1

Representatives voting aye were: Armstrong, Arriola, Baird, Beavers, Bittle, Black, Bone, Bowers, Boyer, Briley, Brooks, Buck, Bunch, Buttry, Caldwell, Casada, Chumney, Clem, Cole (Carter), Cole (Dyer), Cooper, Davidson, Davis (Washington), Davis (Cocke), DeBerry J, DeBerry L, Dunn, Ferguson, Fitzhugh, Ford, Fowlkes, Fraley, Garrett, Givens, Godsey, Goins, Hagood, Hargett, Hargrove, Harwell, Head, Hood, Johnson, Jones U, Kent, Kisber, Langster, Lewis, Maddox, McCord, McDaniel, McDonald, McKee, McMillan, Miller, Montgomery, Mumpower, Newton, Odom, Overbey, Patton, Phelan, Phillips, Pinion, Pleasant, Pruitt, Ridgeway, Rinks, Roach, Rowland, Sands, Sargent, Scroggs, Sharp, Shaw, Shepard, Stanley, Tidwell, Tindell, Todd, Towns, Turner (Hamilton), Turner (Shelby), Turner (Davidson), Walker, West, Westmoreland, White, Whitson, Windle, Winningham, Wood, Mr. Speaker Naifeh -- 93.

Representatives present and not voting were: Vincent -- 1.

A motion to reconsider was tabled.

House Bill No. 1139 -- Probation and Parole - Prohibits private entities providing misdemeanor probation services from engaging in business dealings that conflict with probation services contract, from having personal business dealings or loaning money to probationers or from having personnel related to probationers under their supervision. Amends TCA Section 40-35-302. by *McMillan, *Buck. (*SB913 by *Kyle)

On motion, House Bill No. 1139 was moved down 2 places on the Calendar.

***House Bill No. 2502** -- Fire Prevention and Investigation - Requires commissioner of agriculture to develop and implement fee system for division of forestry's provision of fire protection on privately-owned forest lands, such fees to be directly assessed against respective private owners of forest land. Amends TCA Title 11, Chapter 4. by *Kernell. (SB2928 by *Kyle)

Rep. Kernell moved that House Bill No. 2502 be reset for the Regular Calendar on May 29, 2002, which motion prevailed.

***House Bill No. 2479** -- Medical Occupations - Provides for suspension or revocation of licenses of health care professionals who fail to repay student loans or meet loan-related service requirements. Amends TCA Title 63. by *Patton. (SB2521 by *Ramsey)

Rep. Patton moved that House Bill No. 2479 be passed on third and final consideration.

Rep. Armstrong moved adoption of Health and Human Resources Committee Amendment No. 1 as follows:

Amendment No. 1

AMEND House Bill No. 2479 By inserting the following language at the end of the amendatory language of Section 1 between the word "service" and the punctuation " , " :

; provided however, before a license is suspended or revoked for such failure, the licensee shall receive notice of the failure to comply and a forty-five (45) day period in which to comply with the terms of repayment;

On motion, Health and Human Resources Committee Amendment No. 1 was adopted.

Rep. Patton moved adoption of Amendment No. 2 as follows:

Amendment No. 2

AMEND House Bill No. 2479 By deleting the language "SECTION 3" and substituting instead the language "SECTION 2"

On motion, Amendment No. 2 was adopted.

Rep. Langster moved the previous question, which motion prevailed.

Rep. Patton moved that **House Bill No. 2479**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes	85
Noes	7
Present and not voting	3

WEDNESDAY, MAY 22, 2002 – EIGHTY-EIGHTH LEGISLATIVE DAY

Representatives voting aye were: Armstrong, Arriola, Baird, Beavers, Bittle, Black, Bone, Bowers, Boyer, Briley, Buck, Bunch, Buttry, Caldwell, Casada, Chumney, Clem, Cole (Carter), Cole (Dyer), Curtiss, Davidson, Davis (Washington), Davis (Cocke), Dunn, Ferguson, Fitzhugh, Ford, Fowlkes, Fraley, Garrett, Givens, Godsey, Goins, Hagood, Hargett, Harwell, Head, Hood, Johnson, Kent, Kisber, Langster, Lewis, Maddox, McCord, McDaniel, McDonald, McKee, McMillan, Miller, Montgomery, Mumpower, Newton, Odom, Overbey, Patton, Phillips, Pinion, Pleasant, Pruitt, Rhinehart, Ridgeway, Rinks, Roach, Rowland, Sands, Sargent, Scroggs, Sharp, Shepard, Stanley, Tidwell, Todd, Turner (Hamilton), Turner (Davidson), Vincent, Walker, West, Westmoreland, White, Whitson, Windle, Winningham, Wood -- 85.

Representatives voting no were: Brooks, DeBerry L, Jones U, Phelan, Shaw, Towns, Turner (Shelby) -- 7.

Representatives present and not voting were: Brown, Cooper, Kernell -- 3.

A motion to reconsider was tabled.

House Bill No. 1139 -- Probation and Parole - Prohibits private entities providing misdemeanor probation services from engaging in business dealings that conflict with probation services contract, from having personal business dealings or loaning money to probationers or from having personnel related to probationers under their supervision. Amends TCA Section 40-35-302. by *McMillan, *Buck. (*SB913 by *Kyle)

Further consideration of House Bill No. 1139 previously considered on today's Calendar.

Rep. McMillan moved that House Bill No. 1139 be passed on third and final consideration.

Rep. Buck moved adoption of Judiciary Committee Amendment No. 1 as follows:

Amendment No. 1

AMEND House Bill No. 1139 By deleting all language following the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, section 40-35-302, is amended by adding the following new subsection:

(h) As used in this section, the term "governmental employee" means employees and officials of the state and its political subdivisions who are employed as law enforcement employees or officials, probation and parole employees or officials, judicial employees or officials or correctional employees or officials, including employees and officials of jails and workhouses.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

On motion, Judiciary Committee Amendment No. 1 was adopted.

Rep. McMillan moved that **House Bill No. 1139**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes	94
Noes	0

Representatives voting aye were: Armstrong, Baird, Beavers, Bittle, Black, Bone, Bowers, Boyer, Briley, Brooks, Brown, Buck, Bunch, Buttry, Caldwell, Casada, Chumney, Clem, Cole (Carter), Cole (Dyer), Cooper, Curtiss, Davidson, Davis (Washington), Davis (Cocke), DeBerry J, DeBerry L, Dunn, Ferguson, Fitzhugh, Ford, Fowlkes, Fraley, Garrett, Givens, Godsey, Goins, Hagood, Hargrove, Harwell, Head, Hood, Johnson, Jones U, Kent, Kernell, Kisber, Langster, Lewis, Maddox, McDaniel, McDonald, McKee, McMillan, Miller, Montgomery, Mumpower, Newton, Odom, Overbey, Patton, Phelan, Phillips, Pinion, Pleasant, Pruitt, Rhinehart, Ridgeway, Rinks, Roach, Rowland, Sands, Sargent, Scroggs, Sharp, Shaw, Shepard, Stanley, Tidwell, Tindell, Todd, Towns, Turner (Hamilton), Turner (Shelby), Turner (Davidson), Vincent, Walker, West, White, Whitson, Windle, Winningham, Wood, Mr. Speaker Naifeh -- 94.

A motion to reconsider was tabled.

***House Bill No. 2067** -- TennCare - Requires Bureau of TennCare to contract with private agency to do eligibility determination pursuant to criteria set by state. Amends TCA Title 71. by *Odom, *Buck, *Davidson, *McKee. (SB2236 by *Jackson)

Rep. Odom moved that House Bill No. 2067 be passed on third and final consideration.

Rep. Rhinehart moved adoption of Commerce Committee Amendment No. 1 as follows:

Amendment No. 1

AMEND House Bill No. 2067 by deleting all language following the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 71, Chapter 5, Part 1, is amended by adding the following as a new section:

SECTION 71-5-192. Not later than September 1, 2002, the comptroller in consultation with the bureau of TennCare or its successor agency and the Select Oversight Committee on TennCare shall issue a request for proposals to qualified entities relative to conducting eligibility determinations for medical assistance under this chapter, in accordance with criteria set by the bureau that comply with state and federal law. Deadline for receipt of request for proposals responses shall be October 15, 2002.

The comptroller shall review all requests for proposals and formulate recommendations.

Not later than February 15, 2003, the comptroller shall make its formal written recommendations to the governor, the commissioner of finance and administration, the Select Oversight Committee on TennCare, and the finance, ways and means committees of the senate and the house of representatives, relative to whether any such request for proposals should be put into effect.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

On motion, Commerce Committee Amendment No. 1 was adopted.

Rep. Kisber moved adoption of Finance, Ways and Means Committee Amendment No. 1 as House Amendment No. 2 as follows:

Amendment No. 2

AMEND House Bill No. 2067 by adding the following new sections immediately preceding the last section and by renumbering the subsequent section accordingly:

SECTION _____. Tennessee Code Annotated, Section 71-5-110, is amended by adding the following language at the end of subsection (b): "To the extent permitted by federal law, the application of a self-employed individual for medical assistance as a part of the TennCare program shall include a copy of the individual's most recent federal income tax return."

SECTION _____. Tennessee Code Annotated, Section 71-5-118, is amended by adding the following as a new subsection (g):

(g) The bureau of TennCare shall establish program to randomly audit persons involved in the medical assistance program to monitor for violations of subsection (b) by such persons. The program shall audit applicants, employers, physicians and other persons involved in the medical assistance program. Violations of subsection (b) shall be regarded as TennCare fraud by bureau and the bureau shall refer appropriate cases of fraud to any appropriate law enforcement agencies, including the Tennessee bureau of investigation, for appropriate action. The bureau shall report concerning the activities of the audit program to the house and senate judiciary committees on or before January 30th of each year.

On motion, Finance, Ways and Means Committee Amendment No. 1 as House Amendment No. 2 was adopted.

Rep. Todd moved the previous question, which motion prevailed.

Rep. Odom moved that **House Bill No. 2067**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes86
Noes7

WEDNESDAY, MAY 22, 2002 – EIGHTY-EIGHTH LEGISLATIVE DAY

Representatives voting aye were: Armstrong, Arriola, Baird, Beavers, Bittle, Black, Bone, Bowers, Boyer, Briley, Buck, Bunch, Caldwell, Casada, Chumney, Clem, Cole (Carter), Cole (Dyer), Curtiss, Davidson, Davis (Washington), Davis (Cocke), DeBerry L, Dunn, Ferguson, Fitzhugh, Ford, Fowlkes, Fraley, Garrett, Givens, Godsey, Goins, Hagood, Hargett, Hargrove, Harwell, Head, Hood, Johnson, Kent, Kernell, Kisber, Langster, Lewis, Maddox, McCord, McDaniel, McDonald, McKee, McMillan, Miller, Montgomery, Mumpower, Newton, Odom, Overbey, Patton, Phelan, Pinion, Pleasant, Pruitt, Rhinehart, Ridgeway, Rinks, Roach, Rowland, Sands, Sargent, Scroggs, Sharp, Shepard, Stanley, Tidwell, Tindell, Todd, Towns, Turner (Hamilton), Vincent, West, Westmoreland, Whitson, Windle, Winningham, Wood, Mr. Speaker Naifeh -- 86.

Representatives voting no were: Brooks, Brown, DeBerry J, Shaw, Turner (Shelby), Turner (Davidson), Walker -- 7.

A motion to reconsider was tabled.

House Bill No. 1131 -- Education - Enacts "Tennessee Charter Schools Act of 2001." by *Winningham, *Montgomery, *McDaniel, *McCord. (*SB887 by *Atchley, *Ford J)

Rep. Winningham moved that House Bill No. 1131 be passed on third and final consideration.

RECOGNITION IN THE WELL

RULES SUSPENDED

On motion, the rules were suspended to allow Education Commissioner Faye Taylor to be recognized in the Well for remarks on House Bill No. 1131.

REGULAR CALENDAR, CONTINUED

Rep. Winningham moved adoption of Education Committee Amendment No. 1 as amended as follows:

Amendment No. 1

AMEND House Bill No. 1131 by deleting all provisions of the bill following the enacting clause and substituting the following:

SECTION 1. This act shall be known and may be cited as the "Tennessee Public Charter Schools Act of 2002."

SECTION 2.

(a) The purpose of this act is to:

(1) Improve learning for all students and close the achievement gap between high and low students;

(2) Provide options for parents to meet educational needs of students in low performing schools.

(3) Encourage the use of different and innovative teaching methods, and provide greater decision making authority to schools and teachers in exchange for greater responsibility for student performance;

(4) Measure performance of pupils and faculty, and ensure that children have the opportunity to reach proficiency on state academic assessments;

(5) Create new professional opportunities for teachers;

(6) Afford parents substantial meaningful opportunities to participate in the education of their children.

(b) It is the intention of this act to provide an alternative means within the public school system for ensuring accomplishment of the necessary outcomes of education by allowing the establishment and maintenance of public charter schools that operate within a school district structure but are allowed maximum flexibility to achieve their goals.

(c) It is the intent of this act to provide both the state department of education and local school systems with options relative to the governance and improvement of low performing schools failing to meet adequate yearly progress as outlined in both TCA 49-1-602 and the federal Elementary and Secondary Education Act.

(d) It is the intent of this act to provide the state department of education and local school systems with options relative to the delivery of instruction for those students with special needs as specified in the federal IDEA.

(e) It is the intent of this act to provide local school systems the option to work in concert with the state's public higher education institutions to establish charter school "laboratories of teaching and learning" as a means of fostering educational innovations for implementation statewide.

SECTION 3. This act applies only to schools formed and operated hereunder.

SECTION 4. **DEFINITIONS.**

(1) "Charter agreement" means a performance-based agreement between the sponsor of a public charter school and the chartering authority, the terms of which are approved by the local board of education for an initial period of five (5) years.

(2) "Chartering authority" means the local board of education which approves, renews or decides not to revoke a public charter school application or agreement.

(3) "Governing body" means the organized group of persons who will operate a public charter school by deciding matters including, but not limited to, budgeting, curriculum and other operating procedures for the public charter school and by overseeing management and administration of a public charter school.

(4) "Licensed teacher" means a person over the age of eighteen (18) who meets the qualifications of Title 49, Chapter 5, Part 1 and has received a license to teach in the public school system in compliance with the rules and regulations of the state board of education.

(5) "Local education agency" has the same definition as used in Section 49-3-302.

(6) "Public charter school" means a public school in the state of Tennessee that is established and operating under the terms of a charter agreement and in accordance with this act.

(7) "Sponsor" means any individual, group, or other organization filing an application in support of the establishment of a public charter school.

SECTION 5. STATUTES, RULES AND REGULATIONS.

(a) Public charter schools shall be part of the state program of public education.

(b) A public charter school is exempt from all statutes, rules and regulations applicable to a school, a school board, or a local education agency, except those identified as not subject to waiver in accordance with guidelines developed by the department of education.

SECTION 6. CREATION OR CONVERSION OF CHARTER SCHOOLS.

(a) Public charter schools may be formed to:

(1) Address the unique needs of students eligible for special education as identified in IDEA;

(2) Provide alternatives for students in schools failing to make adequate yearly progress, not to exceed the total number of schools on probation as defined by the state's accountability system;

(3) Provide local school systems the option to work in concert with the state's higher education institutions; and

(4) Provide for other model sites, not to exceed ten (10) sites statewide per year.

(b) A public charter school may be formed by creating a new school or converting an existing public school to charter status pursuant to the provisions of this act.

(1) Newly created public charter schools:

(A) The sponsor of a public charter school must file a public charter school application with the local board of education on or before November 15 of the year preceding the year in which the proposed public charter school plans to begin operation.

(B) Upon approval of a charter application, the sponsor shall authorize a governing body to operate the public charter school. A public charter school shall be operated by a not-for-profit organization. No charter shall be granted to a for-profit corporation.

(2) Conversion of existing schools to charter status:

(A) Any existing public school may convert to a public charter school pursuant to the provisions of this act if the parents of sixty percent (60%) of the children enrolled at the school agree and demonstrate support by signing a petition seeking conversion. Parents whose children are enrolled at the school shall have the option to enroll their child in another public school without penalty.

(B) A LEA may convert any existing public school to a public charter school pursuant to subsections (a)(1), (2), and (3) of this section. Parents whose children are enrolled at the school shall have the option to enroll their child in another public school without penalty.

(C) The conversion must occur at the beginning of an academic school year and shall be subject to compliance with this act.

(c) No charter agreement shall be granted under this act that authorizes the conversion of any private, parochial, cyber-based, or home-based school to charter status.

(d) Nothing in this act shall be construed to prohibit any individual or organization from providing funding or other assistance to the establishment or operation of a public charter school

SECTION 7. **APPLICATION PROCESS.**

(a) On or before November 15 of the year preceding the year in which the proposed public charter school plans to begin operation, the sponsor seeking to establish a public charter school shall prepare and file with the local board of education an application providing the following information and documents:

(1) A statement defining the mission and goals of the proposed public charter school;

(2) The proposed instructional goals and methods for the school, which, at a minimum, shall include teaching and classroom instruction methods that will be used to provide students with the knowledge, proficiency, and skills needed to reach the goals of the school;

(3) A plan for evaluating student academic achievement at the proposed public charter school and the procedures for remedial action that will be used by the school when the academic achievement of a student falls below acceptable standards;

(4) An operating budget based on anticipated enrollment;

(5) The method for conducting annual audits of the financial, administrative and program operations of the school;

(6) A timetable for commencing operations as a public charter school which shall provide for a minimum number of academic instruction days, which shall not be fewer than those required by statute.

(7) The proposed rules and policies for governance and operation of the school;

(8) The names and addresses of the members of the governing body;

(9) A description of the anticipated student enrollment and the nondiscriminatory admission policies;

(10) The code of behavior and discipline of the proposed public charter school;

(11) The plan for compliance with the applicable health and safety laws and regulations of the federal government and the laws of the state of Tennessee;

(12) The qualifications required of employees of the proposed public charter school;

(13) The identification of the individuals and entities sponsoring the proposed public charter school, including their names and addresses;

(14) The procedures governing the deposit and investment of idle funds, purchasing procedures, and comprehensive travel regulations;

(15) The plan for the management and administration of the school;

(16) A statement of assurance of liability by the governing body of the charter school;

(17) Types and amounts of insurance coverage to be held either by the charter school or approved by the local board of education; and

(18) The plan for transportation for the pupils attending the charter school.

(19) Information regarding financing commitments from equity investors or debt sources for cash or similar liquid assets sufficient to demonstrate that the charter school will have liquid assets sufficiently available to operate the school on an ongoing and sound financial basis. In lieu of cash or similar liquid assets, an applicant may provide a financial bond.

SECTION 8. **APPROVAL, DENIAL OF APPLICATION.**

(a) The local board of education shall have the authority to approve applications to establish public charter schools and renew public charter school agreements. The local board of education shall rule by resolution, at a regular or special called meeting, on the approval or denial of a charter application within sixty (60) days of receipt of the completed application. Should the local board of education fail to either approve or deny a charter application within the sixty (60) day time limit herein prescribed, such application shall be deemed approved.

(b) The local board of education shall not deny an application on the basis that approval of the application might exceed the maximum number of public charter schools provided for in Section 6 of this act. The grounds upon which the local board of education based a decision to deny a public charter school application must be stated in writing, specifying objective reasons for the denial. Upon receipt of the grounds for denial, the sponsor shall have fifteen (15) days within which to submit an amended application to correct the deficiencies. The local board of education shall have fifteen (15) days either to deny or to approve the amended application.

(c)(1) A denial by the local board of education of an application to establish a public charter school may be appealed by the sponsor, within ten (10) days of the final decision to deny, to the state board of education. The appeal and review process shall be as follows:

(A) Within sixty (60) days after receipt of the notice of appeal or the making of a motion to review by the state board and after reasonable public notice, the state board, at a public hearing which may be held in the school district in which the proposed charter school has applied for a charter, shall review the decision of the local board of education and make its findings. If the state board finds that the local board's decision was contrary to the best interests of the pupils, school district, or community, the state board shall remand such decision to the local board of education with written instructions for approval of the charter. The decision of the state board shall be final and not subject to appeal.

SECTION 9. APPLICABLE CAPS.

Immediately upon approval of a charter, the chartering authority shall notify the department of education. Date of the official action by the chartering authority shall be considered by the department in determining whether the charter is permitted under the applicable caps contained in this act.

SECTION 10. CHARTER AGREEMENT.

(a) The approval by the chartering authority of a public charter school application shall be in the form of a written agreement signed by the sponsor and the chartering authority, which shall be binding upon the governing body of the public charter school. The charter agreement for a public charter school shall be in writing and contain all components of the application.

(b) The governing body of the charter school may amend the original charter by making petition to the chartering authority. Timelines for approval and the appeal process in Section 8 shall apply to all petitions to amend the original charter.

SECTION 11. COMPLIANCE.

(a) A public charter school shall:

(1) Operate as a public, nonsectarian, non-religious public school, with control of instruction vested in the governing body of the school under the general supervision of the chartering authority and in compliance with the charter agreement and this act;

(2) Meet the same performance standards and requirements adopted by the state board of education for public schools.

(3) Receive state, federal, and local funds from the local board of education; and

(4) Provide special education services for students as provided in Title 49, Chapter 10.

(b) A public charter school shall be subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, national origin, religion, ancestry, or need for special education services. A public charter school may not violate or be used to subvert any state or federal court orders in place in the local school district.

(c) A public charter school shall comply with all applicable health and safety standards, regulations and laws of the United States and the State of Tennessee.

(d) A public charter school shall be accountable to the chartering authority for the purposes of ensuring compliance with the charter agreement and the requirements of this act.

(e) All contracts for goods and services in excess of five thousand dollars (\$5,000) shall be bid and must be approved by the governing body of each public charter school.

(f) A public charter school shall be governed and managed by a governing body in a manner agreed to by the sponsor and the chartering authority as provided in the charter agreement.

(g) With regard to conflicts of interest, the governing body of a public charter school shall be subject to the provisions of Sections 12-4-101 and 12-4-102.

(h) The meetings of the governing body of a public charter school shall be deemed public business and must be held in compliance with Title 8, Chapter 44, Part 1.

(i) All teachers in a public charter school must have a current valid Tennessee teaching license, or meet the minimum requirements for licensure as defined by the state board of education.

(j) A public charter school is subject to state audit procedures and audit requirements.

(k) A public charter school shall not charge tuition; provided, however, tuition may be charged if the governing body of the charter school approves a transfer from another district to a public charter school in its district pursuant to the provisions of Section 49-6-3003.

(l) A charter school shall be operated on a July 1 to June 30 fiscal year and the governing body shall adopt and operate under an annual budget for such fiscal year. The budget shall be prepared in the same format as that required by the state department of education for local education agencies.

(m) A charter school shall maintain its accounts and records in accordance with generally accepted accounting principles and in conformance with the uniform chart of accounts and accounting requirements prescribed by the comptroller of the treasury. The charter school shall prepare and publish an annual financial report that encompasses all funds. The annual financial report shall include the audited financial statements of the charter school.

(n) A charter school shall require any member of the governing body, employee, officer or other authorized person who receives funds, has access to funds, or has authority to make expenditures from funds, to give a surety bond in the form prescribed by Section 8-19-101. The cost of such surety bond shall be paid by the charter school and in such amount as determined by the governing body.

SECTION 12. **FUNDING.**

(a) The local board of education shall allocate one hundred percent (100%) of the state and local education funds to the charter school on the per pupil expenditure of the local education agency. The per pupil expenditure shall be based on the prior year average daily membership (ADM) of the LEA. All funds shall be spent according to the budget submitted in the charter agreement, or as otherwise revised by the public charter school governing body, subject to the requirements of state and federal law. At the request of the governing body of the public charter school, the local board of education may act as fiscal agent for a public charter school or distribute the allocated funds to the public charter school to be administered in compliance with the charter agreement and state and federal laws.

(b) Funds which would otherwise be allocated on the basis of enrollment in the prior year shall be allocated, during the first full academic year of operation of any public charter school, on the basis of the anticipated enrollment in the charter agreement, which amount may be subsequently adjusted to reflect the actual number of students enrolled.

(c) In order to comply with the requirements for allocating funds to the public charter school, the local board of education may provide liability or other forms of insurance pursuant to the charter agreement.

(d) A public charter school may also be funded by federal grants, grants, gifts, devises, or donations from any private sources, and state funds appropriated for the support of the public charter school, if any, and any other funds that may be received by the local school district. Public charter schools, the local board of education and the state department of education are encouraged to apply for federal funds appropriated specifically for the support of public charter schools.

SECTION 13. **ENROLLMENT.**

(a) Participation in a public charter school shall be based on parental choice.

(b) A charter school shall enroll an eligible pupil who submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or building. In this case, pupils shall be enrolled on the basis of a lottery.

(c) Preference may be afforded to the siblings of a pupil who is already enrolled and to the children of a teacher, sponsor or member of the governing body of the charter school, not to exceed ten (10%) of total enrollment or twenty-five (25) students, whichever is less.

SECTION 14. TRANSPORTATION.

(a) If a public charter school elects to provide transportation for its pupils, the transportation shall be provided by the school or by agreement with the local education agency within the district in which the school is located in the same manner it would be provided if the students were enrolled in any other school within the local education agency. If a public charter school elects not to provide transportation for its pupils, the school shall not receive the funds that would otherwise have been spent to do so.

(b) For pupils who reside outside the district and who have been approved by the governing board of a charter school to attend a public charter school, the school is not required to provide or pay for transportation.

(c) At the time a pupil enrolls in a public charter school, the school shall provide the child's parent or guardian with information regarding transportation.

SECTION 15. CONDITIONAL APPROVAL.

If approval is a prerequisite for the sponsor to raise working capital, a chartering authority may grant conditional approval for a charter application. The chartering authority shall grant full approval subject to the sponsor providing information regarding financing commitments from equity investors or debt sources for cash or working capital sufficient to demonstrate that charter school will have liquid assets sufficiently available to operate the school on an ongoing and sound financial basis. In lieu of cash or similar liquid assets, an applicant may provide a financial bond.

SECTION 16. DISSEMINATION OF INFORMATION.

The state department of education shall provide information to the public, directly and through the local board of education, on how to form and operate a public charter school. This information shall include a standard application format which shall include the information specified in Section 7 of this act.

SECTION 17. LEAVES OF ABSENCE FOR TEACHERS.

(a) If a teacher employed by a local education agency makes a written request for an extended leave of absence to teach at a public charter school, the local education agency may grant the leave. Any extensions are at the discretion of the local education agency. The leave shall be governed by Title 49, Chapter 5, Part 7, including, but not limited to, reinstatement, notice of intention to return, seniority, salary, and insurance.

(b) The years of service acquired by a teacher while on a leave of absence to teach at a public charter school may, at the discretion of the local board, be used to obtain or determine tenure status.

(c) For salary rating purposes, a teacher shall receive credit for years of service acquired while teaching at a public charter school.

SECTION 18. BARGAINING UNITS.

Employees of a charter school may, if otherwise eligible, organize under the "Education Professional Negotiations Act", Title 4, Chapter 5, Part 6, and comply with its provisions upon the formation of one or more bargaining units at the school. Bargaining units at the school shall be separate from any other unit within the local education agency. Bargaining units in charter schools may elect to represent themselves in negotiations with their governing body, or they may elect to be represented by any qualified person or organization, including the local bargaining unit within the local education agency.

SECTION 19. GROUP INSURANCE.

Teachers, as defined in Section 8-34-101(46), of a public charter school shall participate in the group insurance plans authorized in Title 8, Chapter 27, Part 3 in the same manner as teachers of the local education agency.

SECTION 20. RETIREMENT BENEFITS.

Tennessee Code Annotated, Title 8, Chapter 35, Part 2, is amended by adding the following as a new, appropriately designated section:

Section 8-35-2 () (a) All teachers and employees of a public charter school that converts from a public school shall continue to participate in the same retirement program as the teachers and employees of the local board of education to which the charter school is associated. Such participation shall be under the same terms and conditions as the teachers and employees of the local board of education. For retirement purposes, all teachers and employees of such a public charter school shall be considered employees of the local board of education and such board of education shall be responsible for all reporting and submission of funds to the appropriate retirement system.

(b) All teachers and employees of a new public charter school shall participate in the same retirement program as the teachers and employees of the local board of education to which the charter school is associated. Such participation shall be under the same terms and conditions as the teachers and employees of the local board of education. For retirement purposes, all teachers and employees of such a public charter school shall be considered employees of the local board of education and such board of education shall be responsible for all reporting and submission of funds to the appropriate retirement system.

SECTION 21. **REPORTING REQUIREMENTS.**

The governing body of the public charter school shall make at least an annual progress report to the sponsor of the school, the chartering authority, Education Oversight Committee of the General Assembly, and the commissioner of education. The report shall contain at least the following information:

- (1) The progress of the school toward achieving the goals outlined in its charter;
- (2) The same information required in the reports prepared by local boards of education pursuant to state laws, rules and regulations; and
- (3) Financial records of the school, including revenues and expenditures.

The reports made pursuant this section shall be public information pursuant to the provisions of Section 10-7-504(a)(4).

SECTION 22. **TERM OF CHARTER – RENEWAL.**

(a) New public charter schools, conversion schools and all renewals of charter agreements shall be for five-year periods.

(b) No later than November 15 of the year prior to the year in which the charter expires, the governing body of a public charter school shall submit a renewal application to the chartering authority. The chartering authority shall rule by resolution, at a regular or special called meeting, on whether to approve or deny the renewal application. The decision of the chartering authority shall be based on the report and evaluation provided for in Section 21. A decision by the chartering authority to deny renewal may be appealed by the governing body, within ten (10) days of the decision to deny, to the state board of education, unless the state chartering board is the chartering authority. If the state board of education approves the renewal of the charter agreement, the public charter school shall continue to operate for the prescribed period of five (5) academic years. A decision by the state board of education to deny the renewal of a charter agreement shall be final. No appeal may be taken.

(c) A public charter school renewal application shall contain:

(1) A report on the progress of the school in achieving the goals, objectives, pupil performance standards, content standards, and other terms of the approved charter agreement; and

(2) A financial statement that discloses the costs of administration, instruction, and other spending categories for the school.

SECTION 23. **REVOCATION OR RENEWAL OF CHARTER.**

(a) A public charter school agreement may be revoked or denied renewal by the final chartering authority if such chartering authority determines that the school does any of the following:

(1) Committed a material violation of any of the conditions, standards, or procedures set forth in the charter;

(2) Failed to meet or make adequate yearly progress toward achievement of the state's accountability system; or

(3) Failed to meet generally accepted standards of fiscal management.

(b) If the chartering authority revokes or does not renew a charter agreement, the chartering authority shall state its reasons for the revocation or nonrenewal.

(c) Except where the chartering authority is the state board of education, a decision not to renew or to revoke a charter agreement may be appealed to the state board of education within ten (10) days of the decision. If the state board of education decides to renew or not to revoke the charter, the state board of education shall be the chartering authority for such school.

(d) Except in the case of fraud, misappropriation of funds, flagrant disregard of the charter agreement or the provisions of this act or similar misconduct, a decision to revoke a charter shall become effective at the close of the academic year.

SECTION 24. ENROLLMENT OF STUDENTS IN TERMINATED CHARTER SCHOOL.

If a charter agreement is not renewed or is terminated in accordance with Section 23 of this act, a pupil who attended the school, siblings of the pupil, or another pupil who resides in the same place as the pupil may enroll in the resident district or may submit an application to a nonresident district according to the provisions of Section 49-6-3105, at any time. Applications and notices required by this section shall be processed and approved in a prompt manner.

SECTION 25. CHARTER SCHOOL POWERS.

The governing body of a public charter school may sue and be sued. The governing body may not levy taxes or issue bonds except in accordance with state law. A public charter school may conduct activities necessary and appropriate to carry out its responsibilities such as:

- (1) Contract for services, except for the management or operation of the charter school by a for-profit entity;
- (2) Buy, sell or lease property; borrow funds as needed; and
- (3) Pledge its assets as security, provided however those assets are not leased or loaned by the state or local government.

SECTION 26. IMMUNITY.

The governing body of a charter school shall be subject to the same limits of liability as local school systems.

SECTION 27. PROMULGATION OF RULES AND REGULATIONS.

The state board of education is authorized to promulgate rules and regulations for the administration of this act.

SECTION 28.

(a) The comptroller of the treasury is hereby authorized to audit any books and records, including internal school activity and cafeteria funds, of any charter school created under this act and by virtue of the statutes of the state of Tennessee when such audit is deemed necessary or appropriate by the comptroller of the treasury. The comptroller of the treasury shall have the full cooperation of officials of the charter school in the performance of such audit or audits.

(b)(1) The governing body of the charter school shall cause an annual audit to be made of the accounts and records, including internal school activity and cafeteria funds, of their school. Such audits may be prepared by certified public accountants or by the department of audit.

(2) The audit shall be completed as soon as practical after June 30 of each year and a copy of such audit shall be furnished to the local board of education, the special joint oversight committee on education, the commissioner of education and the comptroller of the treasury.

(c) The comptroller of the treasury, through the department of audit, shall be responsible for ensuring that the audits are prepared in accordance with generally accepted auditing standards and determining if the audits meet minimum audit standards and regulations which shall be prescribed by the comptroller of the treasury. No audit may be accepted as meeting the requirements of this section until such audit has been approved by the comptroller of the treasury. In the event the governing body fails or refuses to have the audit prepared, then the comptroller of the treasury may appoint a certified public accountant or direct the department of audit to prepare the audit, the cost of such audit shall be paid by the governing body.

SECTION 29. **EFFECTIVE DATE.**

This act shall take effect upon becoming law, the public welfare requiring it.

On motion, Education Committee Amendment No. 1 as amended was adopted.

Rep. Kisber moved adoption of Finance, Ways and Means Committee Amendment No. 1 as House Amendment No. 2 as follows:

Amendment No. 2

AMEND House Bill No. 1131 by deleting subsection (b) of Section 13 of the bill as amended by HA 1064 and by substituting instead the following:

(b)(1) A charter school shall enroll an eligible pupil who submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or building.

(2)(A) If applications exceed the planned capacity of the public charter school, the following preferences shall apply:

(i) Pupils in attendance in the previous school year at any public school that converts to become a public charter school;

(ii) Pupils attending public schools within the local education agency in which the public charter school is located, if those pupils would otherwise be included in the area in which the public charter school will focus;

(iii) Children residing within the local education agency service area in which the public charter school is located, but who are not enrolled in public schools, if those children would otherwise be included in the area in which the public charter school will focus; and

(iv) Children residing outside the local education agency in which the public charter school is located and whose needs would be included in the area in which the public charter school will focus.

(B) If enrollment within a group of preference set out in subdivision (2)(A) exceeds the planned capacity of the school, enrollment within that group shall be determined on the basis of a lottery.

On motion, Finance, Ways and Means Committee Amendment No. 1 as House Amendment No. 2 was adopted.

Rep. Winningham requested that Amendment No. 3 be placed at the heel of the Amendments.

Rep. Winningham moved that Amendment No. 4 be withdrawn, which motion prevailed.

Rep. Winningham moved adoption of Amendment No. 5 as follows:

Amendment No. 5

AMEND House Bill No. 1131 by adding the following language to the end of amendatory subdivision (a)(2) in Section 11 of the bill, as amended.

The state department of education shall prepare an annual report card for public charter schools in the same manner as for other public schools.

On motion, Amendment No. 5 was adopted.

Rep. U. Jones moved adoption of Amendment No. 6 as follows:

Amendment No. 6

AMEND House Bill No. 1131 by deleting Section (6)(a) in its entirety and replacing it with the following language:

(a) Public charter schools may be formed to:

(1) Provide alternatives for students in schools failing to make adequate yearly progress, as defined by the state's accountability system; and

(2) Address the unique needs of students eligible for special education services as identified by IDEA or provide local school systems the option to work in concert with the state's higher education institutions, not to exceed a combined total of ten (10) sites, statewide, per year. Public charter schools applications designed to address these needs must be based on an agreement with the LEA and are not subject to appeal to the state board of education.

AND FURTHER AMEND by adding a new subsection (6)(b)(1)(C) as follows:

(C) Newly created public charter schools created for the purpose stated in Section 6(a)(1) shall not exceed, statewide, the number of schools failing to make adequate yearly progress as defined by the state's accountability system. However, in LEAs with more than thirty (30) schools failing to make adequate yearly progress, the number of newly created public charter schools shall be limited to one-third per year the number of schools failing to make adequate year progress.

On motion, Amendment No. 6 was adopted.

Rep. U. Jones moved that Amendment No. 7 be withdrawn, which motion prevailed.

Rep. Odom moved that Amendment No. 8 be withdrawn, which motion prevailed.

Rep. Sands moved that Amendment No. 9 be withdrawn, which motion prevailed.

Rep. Winningham moved adoption of Amendment No. 10 as follows:

Amendment No. 10

AMEND House Bill No. 1131 By adding the following language to the end of amendatory subdivision (b)(2)(C) in Section 6 of the bill, as amended:

Any teacher or administrator who transfers from a public charter school to another school in the LEA, shall suffer no impairment, interruption, or diminution of the rights and privileges of a then existing teacher or administrator, and such rights and privileges shall continue without impairment, interruption or diminution with the local board of education. "Rights and privileges", as used in this subsection, include, but are not limited to, salary, pension or retirement benefits, sick leave accumulation, tenure, seniority, and contract rights with the local board of education. Teachers and administrators in converted schools shall be allowed to transfer to vacant positions in other schools in the school system prior to the hiring of new personnel for those positions.

On motion, Amendment No. 10 was adopted.

Rep. U. Jones moved adoption of Amendment No. 11 as follows:

Amendment No. 11

AMEND House Bill No. 1131 by deleting Section 29 (Effective Date), as amended, and substituting the following:

SECTION 29. This act shall take effect upon becoming a law, the public welfare requiring it; however, such provisions related to the creation of new public charter schools shall sunset effective July 1, 2008, unless reenacted or extended by the General Assembly before that date.

On motion, Amendment No. 11 was adopted.

Rep. Brooks moved adoption of Amendment No. 12 as follows:

Amendment No. 12

AMEND House Bill No. 1131 by adding the following new section immediately preceding the last section and by renumbering the subsequent section accordingly:

Section _____. No expenditure of public funds pursuant to this act shall be made in violation of the provisions of Title VI of the Civil Rights Act of 1964, as codified in 42 United States Code 2000(d).

On motion, Amendment No. 12 was adopted.

Rep. Winningham moved adoption of Amendment No. 13 as follows:

Amendment No. 13

AMEND House Bill No. 1131 By deleting Section 5(b) and substituting the following:

(b) A public charter school is exempt from all statutes, rules and regulations applicable to a school, a school board, or a local education agency, except those identified as not subject to waiver in accordance with guidelines developed by the department of education and approved by the state board of education, but specifically including:

- (1) Federal and state civil rights;
- (2) Federal, state, and local health and safety;
- (3) Federal and state public records;
- (4) Immunizations;
- (5) Possession of weapons on school grounds;
- (6) Background checks and fingerprinting of personnel;

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- (7) Federal and state special education services;
- (8) Student due process;
- (9) Parental rights;
- (10) Federal and state student assessment and accountability;
and
- (11) Open meetings.

On motion, Amendment No. 13 was adopted.

Rep. Winningham moved that Amendment No. 3 be withdrawn, which motion prevailed.

Rep. Kent moved the previous question, which motion prevailed by the following vote:

Ayes	71
Noes	20
Present and not voting	3

Representatives voting aye were: Arriola, Baird, Beavers, Bittle, Black, Bone, Boyer, Brooks, Buck, Bunch, Buttry, Caldwell, Casada, Clem, Cole (Carter), Cole (Dyer), Curtiss, Davidson, Davis (Washington), Davis (Cocke), DeBerry L, Ferguson, Ford, Fowlkes, Garrett, Givens, Godsey, Hagood, Hargett, Hargrove, Harwell, Head, Hood, Johnson, Kent, Langster, Lewis, McCord, McDaniel, McDonald, McKee, Montgomery, Mumpower, Newton, Odom, Overbey, Patton, Phelan, Phillips, Pinion, Pleasant, Rhinehart, Ridgeway, Rinks, Roach, Rowland, Sands, Sargent, Scroggs, Sharp, Shepard, Stanley, Todd, Turner (Davidson), Vincent, Walker, West, Westmoreland, Whitson, Wood, Mr. Speaker Naifeh -- 71.

Representatives voting no were: Armstrong, Bowers, Brown, Chumney, Cooper, DeBerry J, Dunn, Fitzhugh, Fraley, Goins, Jones U, Maddox, McMillan, Miller, Shaw, Tidwell, Towns, Turner (Shelby), White, Windle -- 20.

Representatives present and not voting were: Kernell, Tindell, Turner (Hamilton) -- 3.

Rep. Winningham moved that **House Bill No. 1131**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes	75
Noes	18
Present and not voting	2

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Representatives voting aye were: Armstrong, Baird, Beavers, Bittle, Black, Bone, Boyer, Briley, Brooks, Buck, Buttry, Caldwell, Casada, Chumney, Clem, Cole (Carter), Cole (Dyer), Curtiss, Davidson, Davis (Washington), Davis (Cocke), DeBerry L, Dunn, Fowlkes, Garrett, Givens, Godsey, Goins, Hagood, Hargett, Hargrove, Harwell, Head, Hood, Johnson, Jones U, Kent, Kernell, Kisber, Langster, McCord, McDaniel, McKee, Miller, Montgomery, Mumpower, Newton, Odom, Overbey, Patton, Phillips, Pinion, Pleasant, Rhinehart, Ridgeway, Rinks, Roach, Rowland, Sands, Sargent, Scroggs, Sharp, Shepard, Stanley, Tindell, Todd, Turner (Hamilton), Vincent, Walker, West, Westmoreland, Whitson, Winningham, Wood, Mr. Speaker Naifeh -- 75.

Representatives voting no were: Arriola, Bowers, Brown, Bunch, Ferguson, Fitzhugh, Fraley, Lewis, Maddox, McDonald, Phelan, Shaw, Tidwell, Towns, Turner (Shelby), Turner (Davidson), White, Windle -- 18.

Representatives present and not voting were: Cooper, McMillan -- 2.

A motion to reconsider was tabled.

RULES SUSPENDED

Rep. Head moved that the rules be suspended to take up House Bill No. 2957, held on the Clerk's desk, out of order, which motion prevailed.

House Bill No. 2957 -- Taxes - Puts into place sales tax rate of 7 percent until July 1, 2002; places tax on services, with revenues from medical services earmarked for TennCare; changes sales tax rate to 4.25 percent and eliminates most exemptions effective July 1, 2002; eliminates all state taxes July 1, 2003. Amends TCA Title 3; Title 4; Title 7; Title 8; Title 9; Title 11; Title 16; Title 18; Title 20; Title 29; Title 30; Title 31; Title 32; Title 35; Title 36; Title 38; Title 39; Title 40; Title 43; Title 45; Title 47; Title 48; Title 49; Title 50; Title 54; Title 55; Title 56; Title 57; Title 60; Title 61; Title 62; Title 63; Title 64; Title 65; Title 66; Title 67; Title 68; Title 70 and Title 71. by *Head, *Whitson, *Naifeh, *DeBerry L, *Rinks, *Briley, *Givens. (*SB2646 by *Cooper J)

On motion, House Bill No. 2957 was made to conform with **Senate Bill No. 2646**; the Senate Bill was substituted for the House Bill.

RECESS MOTION

Rep. Boyer moved that the House stand in recess immediately following the explanation of Senate Bill No. 2646.

Rep. Head moved that the motion to recess be tabled, which motion prevailed by the following vote:

Ayes	52
Noes	32
Present and not voting	3

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Representatives voting aye were: Armstrong, Arriola, Bone, Bowers, Briley, Brown, Buck, Caldwell, Chumney, Cole (Carter), Cole (Dyer), Curtiss, Davidson, Davis (Cocke), DeBerry L, Ferguson, Fitzhugh, Fowlkes, Givens, Head, Jones U, Kernell, Kisber, Langster, Lewis, Maddox, McDonald, McMillan, Miller, Odom, Phelan, Phillips, Pinion, Rhinehart, Ridgeway, Rinks, Roach, Sands, Shaw, Shepard, Tidwell, Tindell, Towns, Turner (Hamilton), Turner (Davidson), Walker, West, White, Whitson, Windle, Winningham, Mr. Speaker Naifeh – 52.

Representatives voting no were: Baird, Beavers, Bittle, Black, Boyer, Bunch, Buttry, Casada, Clem, Davis (Washington), Dunn, Ford, Garrett, Goins, Hagood, Hood, Johnson, McCord, Montgomery, Newton, Overbey, Patton, Rowland, Sargent, Scroggs, Sharp, Stanley, Todd, Turner (Shelby), Vincent, Westmoreland, Wood – 32.

Representatives present and not voting were: Harwell, McDaniel, Mumpower – 3.

Rep. Kisber requested that Finance, Ways and Means Committee Amendment No. 1 be placed at the heel of the Amendments.

Rep. Head moved adoption of Amendment No. 2 as follows:

Amendment No. 2

AMEND Senate Bill No. 2646 by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. The title of this act is, and may be cited as, "The Tax Reform Act of 2002".

SECTION 2. Tennessee Code Annotated, Title 67, Chapter 6, Part 3 is amended by adding the following new section:

67-6-385. (a)(1) Except as provided in subdivision (2), the sale of food and food ingredients for human consumption shall be exempt from the tax levied by this chapter.

(2) The following food and food ingredients shall remain subject to the tax levied by this chapter:

(A) Candy;

(B) Dietary supplements;

(C) Prepared foods; and

(D) Soft drinks that have been combined or mixed together or combined by the seller for sale as a single item, including, but not limited to, soft drinks sold in a soda fountain. Soft drinks sold in a sealed container such as a bottle or can, without combining or mixing of ingredients by the seller, shall be exempt from the tax levied by this chapter.

(3) For purposes of this chapter:

(A) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration.

(B) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(i) Contains one (1) or more of the following dietary ingredients:

(a) a vitamin;

(b) a mineral;

(c) an herb or other botanical;

(d) an amino acid;

(e) a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(f) a concentrate, metabolite, constituent, extract, or combination of any ingredient described above; and

(ii) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(iii) Is required to be labeled as a dietary supplement, identifiable by the "Supplement Facts" box found on the label and as required pursuant to 21 C.F.R. §101.36.

(C) "Prepared food" means:

(i) Food sold in a heated state or heated by the seller;

(ii) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws.

"Prepared food" does not include food that is only sliced, repackaged, or pasteurized by the seller.

(D) "Soft drinks" means non-alcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain:

(i) Milk or milk products;

(ii) Soy, rice or similar milk substitutes; or

(iii) Greater than fifty percent (50%) of vegetable or fruit juice by volume.

(b) Except as otherwise provided in this section, "food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

(c) As used in this section, "food and food ingredients" does not include:

(1) "Alcoholic beverages" which means beverages that are suitable for human consumption and contain one-half (1/2) of one (1) per cent or more of alcohol by volume, and also means and includes malt product beverages and similar products suitable for human consumption, commonly known by such names as "near beer", "brew", or "non-alcoholic beer", that contain alcohol of less than one-half (1/2) of one (1) percent of alcohol by volume; and

(2) "Tobacco" which means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

(d)(1) Retailers shall be required to record and report to the department all exempt sales under this section.

(2) Failure to comply with the requirements of this subsection shall subject the retailer to a civil penalty in the amount of five hundred dollars (\$500) for each violation.

SECTION 3. Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following new section:

67-6-386. (a)(1) The first five hundred dollars (\$500) on the sale or use of any single article of clothing shall be exempt from the tax levied by this chapter.

(2) The sale of protective equipment shall be exempt from the tax levied by this chapter.

(3) The sale of clothing accessories or equipment and sport or recreational equipment shall remain subject to the tax levied by this chapter:

(b) For purposes of this section, "clothing" shall mean all human wearing apparel suitable for human use including, but not limited to:

- (1) Aprons, household and shop;
- (2) Athletic supporters;
- (3) Baby receiving blankets;
- (4) Bathing suits and caps;
- (5) Beach capes and coats;
- (6) Belts and suspenders;
- (7) Boots;
- (8) Coats and jackets;
- (9) Costumes;
- (10) Diapers (children and adults - including disposables);
- (11) Ear muffs;
- (12) Footlets;
- (13) Formal wear;
- (14) Garters and garter belts;
- (15) Girdles;
- (16) Gloves and mittens for general use;
- (17) Hats and caps;
- (18) Hosiery;
- (19) Insoles for shoes;
- (20) Lab coats;
- (21) Neckties;

- (22) Overshoes;
- (23) Pantyhose;
- (24) Rainwear;
- (25) Rubber pants;
- (26) Sandals;
- (27) Scarves;
- (28) Shoes and shoe laces;
- (29) Slippers;
- (30) Sneakers;
- (31) Socks and stockings;
- (32) Steel-toed shoes;
- (33) Underwear;
- (34) Uniforms, athletic and non-athletic; and
- (35) Wedding apparel.

(c) For purposes of this section, clothing shall not include:

- (1) Belt buckles sold separately;
- (2) Costume masks sold separately;
- (3) Patches and emblems sold separately;
- (4) Sewing equipment and supplies (knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, thimbles);
- (5) Sewing materials that become part of clothing (buttons, fabric, lace, thread, yarn, zippers); and
- (6) Otherwise exempt items sold on the premises of a sports facility as provided in Section 67-6-103(d).

(d) For purposes of this section, the following definitions are mutually exclusive of clothing and each other:

(1) "Clothing accessories or equipment" shall mean incidental items worn on the person or in conjunction with clothing. The following list is intended to be a list of examples and not an all-inclusive list of possibilities. Clothing accessories shall include:

- (A) Briefcases;
- (B) Cosmetics;
- (C) Hair notions, including barrettes, hair bows, hair nets, etc.;
- (D) Handbags;
- (E) Handkerchiefs;
- (F) Jewelry;
- (G) Sun glasses, non-prescription;
- (H) Umbrellas;
- (I) Wallets;
- (J) Watches; and
- (K) Wigs and hair pieces.

(2) "Sport or recreational equipment" shall mean items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use. The following list is intended to be a list of examples and not an all-inclusive list of possibilities. Sport or recreational equipment shall include:

- (A) Ballet and tap shoes;
- (B) Cleated or spiked athletic shoes;
- (C) Gloves (baseball, bowling, boxing, hockey, golf, etc.);
- (D) Goggles;
- (E) Hand and elbow guards;
- (F) Life preservers and vests;
- (G) Mouth guards;
- (H) Roller and ice skates;

- (I) Shin guards;
- (J) Shoulder pads;
- (K) Ski boots;
- (L) Waders; and
- (M) Wetsuits and fins.

(3) "Protective equipment" shall mean items for human wear and designed as protection of the wearer against injury or disease or as protection against damage or injury of other persons or property but not suitable for general use. The following list is intended to be a list of examples and not an all inclusive list of possibilities. Protective equipment shall include:

- (A) Breathing masks;
- (B) Clean room apparel and equipment;
- (C) Ear and hearing protectors;
- (D) Face shields;
- (E) Finger guards;
- (F) Hard hats;
- (G) Helmets;
- (H) Paint or dust respirators;
- (I) Protective gloves;
- (J) Safety glasses and goggles;
- (K) Safety belts;
- (L) Tool belts; and
- (M) Welders gloves and masks.

(e) For purposes of this section, "single article" shall mean that which is regarded by common understanding as a separate unit exclusive of any accessories, extra parts, etc., and that which is capable of being sold as an independent unit or as a common unit of measure, a regular billing or other obligation. Such independent units sold in sets, lots, suites, etc., at a single price shall not be considered a single article.

(f)(1) Retailers shall be required to record and report to the department all exempt sales under this section.

(2) Failure to comply with the requirements of this subsection shall subject the retailer to a civil penalty in the amount of five hundred dollars (\$500) for each violation.

SECTION 4. Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following new section:

67-6-387. (a)(1) The sale of over-the-counter drugs shall be exempt from the tax levied by this chapter.

(2) The sale of dietary supplements, as defined in Section 2 of this act, shall remain subject to the tax levied by this chapter.

(b) For purposes of this section, "over-the-counter drugs" shall mean a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66. "Over-the-counter drugs" does not include dietary aids, supplements, natural or herbal remedies, or health foods, notwithstanding any claim to medicinal value that such aids, supplements, remedies or foods may make, even if such item is identified as a drug under 21 C.F.R. § 201.66. "Over-the-counter drugs" also does not include soaps and cleaning lotions, shampoo, toothpaste, mouthwash, anti-perspirants, and sun tan lotions and screens, even if such item is identified as a drug under 21 C.F.R. § 201.66.

(c)(1) Retailers shall be required to record and report to the department all exempt sales under this section.

(2) Failure to comply with the requirements of this subsection shall subject the retailer to a civil penalty in the amount of five hundred dollars (\$500) for each violation.

SECTION 5. Tennessee Code Annotated, Section 67-6-103, is amended by deleting subsection (a) and by substituting instead the following:

(a) The commissioner shall deposit promptly to the credit of the state treasurer in state depositories all moneys received by the commissioner under the provisions of this chapter, and all such moneys shall be earmarked and allocated as follows:

(1) Sixty-five and ninety-seven thousandths percent (65.0970%) of such moneys shall be earmarked and allocated specifically and exclusively to educational purposes;

(2)(A) The department of revenue, based upon the reporting of exempt sales under Sections 67-6-385, 67-6-386, and 67-6-387, and any other data or information that the department deems relevant, shall substantially reimburse municipalities for loss of state tax revenue resulting from the amendments to title 67, chapter 6, part 3 provided in the Tax Reform Act of 2002. The aggregate sum of money available for distribution to municipalities shall be approximately equal to the aggregate amount that they would have received under this section prior to the amendments to title 67, chapter 6, part 3 provided in the Tax Reform Act of 2002. A sum sufficient shall be earmarked and allocated from the general fund for the purpose of substantially reimbursing municipalities.

(B) The amounts determined under item (A) shall be distributed to municipalities pro rata by population determined according to the most recent federal decennial census or any interim local census as provided in items (D) and (E) .

(C)(i) A municipality having a population of one thousand one hundred (1,100) or more persons, according to the federal census of 1970 or any subsequent federal census, in which at least forty percent (40%) of the assessed valuation (as shown by the tax assessment rolls or books of the municipality) of the real estate in the municipality consists of hotels, motels, tourist courts accommodation, tourist shops and restaurants, is defined as a "premiere type tourist resort" for purposes of this chapter. As an alternative to and in lieu of the allocation prescribed in subdivision (a)(2)(A) and (B), a premiere type tourist resort may elect to receive six and forty-eight thousandths percent (6.0480%) of the tax actually collected and remitted by dealers within the boundaries of such resort. Any distribution made to a premiere type tourist resort pursuant to such election shall be earmarked and paid from the general fund. If, however, any such payment is made to a premiere type tourist resort pursuant to the election, the amount which would have been received by such resort had the resort not exercised the election shall be earmarked and allocated to the general fund;

(ii) A municipality meeting the criteria set forth in subdivision (a)(2)(C)(i) and also owning a golf course and ski slope shall also receive an amount equal to the amount distributed pursuant to subdivision (a)(2)(C)(i). Any distribution made to such a municipality shall be earmarked and paid from the general fund for the purpose of assisting in the retirement of the convention center obligations in connection with the acquisition, construction and operation of the convention center;

(iii) A municipality meeting the criteria set forth in subdivision (a)(2)(C)(i) and also containing within its boundaries a theme park of not less than eighty (80) acres shall also receive an amount equal to the distribution pursuant to subdivision (a)(2)(C)(i);

(iv)(a) A municipality meeting the criteria set forth in subdivision (a)(2)(C)(ii) shall also receive in addition to amounts authorized in this subsection in the 1988-1989 fiscal year, an amount equal to fifty-six percent (56%) of the amount distributed in the 1986-1987 fiscal year pursuant to subdivision (a)(2)(D)(ii), and an amount equal to ninety percent (90%) of the amount distributed in the 1986-1987 fiscal year in subsequent years;

(b) A municipality meeting the criteria set forth in subdivision (a)(2)(C)(iii) shall also receive, in addition to amounts authorized in this subsection in the 1988-1989 fiscal year, an amount equal to sixty percent (60%) of the amount distributed in the 1986-1987 fiscal year pursuant to subdivision (a)(2)(C)(iii), and an amount equal to ninety-six percent (96%) of the amount distributed in the 1986-1987 fiscal year in subsequent years;

(v) The collective amounts paid under subdivisions (a)(2)(C)(i) through (a)(2)(C)(iv) shall be limited to the collective amounts paid under Section 67-6-103(a)(3)(B)(i) through Section 67-6-103(a)(3)(B)(iv) for the 1999-2000 fiscal year;

(D) Any municipality shall have the right to take not more than one (1) special census at its own expense at any time during the interim between the regular decennial federal censuses. Such right shall include the current decennium. Any such census shall be taken by the federal bureau of the census, or in a manner directed by and satisfactory to the comptroller. The population of the municipality shall be revised in accordance with the special census for purposes of distribution of such funds, effective on the next July 1 following the certification of the census results by the federal bureau of the census or the comptroller to the commissioner of finance and administration; the aggregate population shall likewise be adjusted in accordance with any such special census, effective the same date as aforementioned;

(E) Any other such special census of the entire municipality taken in the same manner provided herein, under any other law, shall be used for the distribution of such funds, and in that case, no additional special census shall be taken under the provisions of this section;

(F) Before distributing moneys to incorporated municipalities as provided in this section, the commissioner of finance and administration shall make a deduction therefrom monthly of a sum equal to one percent (1%) of the amount allocated to incorporated municipalities. This sum, together with an appropriation per annum from the general fund of the state, shall be apportioned and transmitted to the University of Tennessee for use by the university in establishing and operating a municipal technical advisory service in its institute for public service, and shall be used for studies and research in municipal government, publications, educational conferences and attendance at such conferences and in furnishing technical, consultative and field services to municipalities in problems relating to fiscal administration, accounting, tax assessment and collection, law enforcement, improvements and public works, and in any and all matters relating to municipal government. This program shall be carried on in cooperation with and with the advice of cities and towns in the state acting through the Tennessee municipal league and its executive committee, which is recognized as their official agency or instrumentality;

(3) Thirty-six hundred seventy-four ten-thousandths percent (0.3674%), or so much thereof as may be required, is appropriated to the department of revenue in addition to its regular appropriation to be expended by it in the administration and enforcement of this chapter;

(4) Ninety-one hundred eighty-five ten-thousandths percent (0.9185%) is appropriated to the sinking fund account to be used by the state funding board for the payment of principal and interest becoming due on state bonds issued by the state of Tennessee; and

(5) The remainder of such moneys shall be earmarked and allocated to the general fund.

SECTION 6. Tennessee Code Annotated, Section 67-6-103(c), is amended by deleting subdivision (2) in its entirety and by substituting instead the following:

(2) Notwithstanding any other provision of law or this act to the contrary, the portion of the sales and use tax revenue dedicated to education, grades k-12, pursuant to the provisions of chapter 529 of the public acts of 1992 and Section 67-6-224(b), shall continue to be earmarked for such purposes as provided in Section 49-3-357 and deposited in the education trust fund of 1992.

SECTION 7. Tennessee Code Annotated, Section 67-6-702, is amended by adding the following new appropriately designated subsection:

(h)(1) Notwithstanding any provision of this chapter to the contrary, effective January 1, 2003, no county or incorporated city or town is authorized to levy any tax on the sale of food exempt from taxation under Sections 67-6-385.

(2) Notwithstanding any provision of this chapter to the contrary, effective July 1, 2002, no county or incorporated city or town is authorized to levy any tax on the sale of over-the-counter drugs exempt from taxation under Section 67-6-387.

(3) Notwithstanding any provision of this chapter to the contrary, temporarily during the period beginning at 12:00 a.m. on July 26, 2002, and ending at 11:59 p.m. on July 28, 2002, and permanently beginning on January 1, 2003, no county or incorporated city or town is authorized to levy any tax on the sale of clothing exempt from taxation under Sections 67-6-386.

SECTION 8. Tennessee Code Annotated, Title 67, Chapter 6, Part 7 is amended by adding the following new section:

67-6-715. (a) Notwithstanding any provision of law to the contrary, the department of revenue, based upon the reporting of exempt sales under Sections 67-6-385, 67-6-386, and 67-6-387, and any other data or information that the department deems relevant, shall substantially reimburse counties and municipalities for loss of revenue resulting from the amendments to title 67, chapter 6, provided in the Tax Reform Act of 2002. Counties and municipalities shall receive an amount that is approximately equal to the amount that they would have received under this section prior to the amendments to title 67, chapter 6, provided in the Tax Reform Act of 2002.

(b) A sum sufficient shall be earmarked and allocated from the general fund for the purpose of substantially reimbursing counties and municipalities as provided in this section.

SECTION 9. Except as provided in Section 10 of this act, Tennessee Code Annotated, Title 67, Chapter 2, Part 1, is amended by deleting that part in its entirety for tax years beginning on or after January 1, 2003; provided, that Section 67-2-119 shall remain in effect until December 31, 2003, for purposes of making distributions under that section.

SECTION 10. Tennessee Code Annotated, Title 67, Chapter 2, Part 1, is amended by adding the following new section:

67-2-123. (a) Notwithstanding any provision of law to the contrary, subject to the limitations in the formula provided in subsection (b) of this section, a sum shall be earmarked and allocated from the general fund to substantially reimburse counties and municipalities for loss of revenue resulting from the amendments to title 67, chapter 2, part 1, provided in this act.

(b)(1) The simple average of the individual amounts received by each county or municipality under Title 67, Chapter 2, Part 1 for the calendar years ending December 31, 2000, December 31, 2001, and December 31, 2002, corrected for known erroneous payments, shall constitute the "individual local government Hall tax base amount" for that county or municipality. If a municipality was not in existence and for that reason received no distribution in one (1) or two (2) of the calendar years referred to in the prior sentence, the denominator used to calculate the average shall be reduced accordingly. If a county or municipality received no distribution in one (1) or two (2) of the referenced calendar years because no tax was paid by any resident for those years, the denominator used to calculate the average shall remain three (3).

(2) The individual local government Hall tax base amount for any county or municipality that did not receive any amounts under title 67, chapter 2, part 1 in any of the calendar years ending December 31, 2000, December 31, 2001, or December 31, 2002, shall be zero (0).

(c) In fiscal years 2004-2005 and 2005-2006, each local government shall receive its individual local government Hall tax base amount increased by three percent (3%), which amounts shall be distributed on or before July 31 immediately following the close of the preceding fiscal year.

(d) In each fiscal year beginning with fiscal year 2006-2007, each local government shall receive its individual local government Hall tax base amount adjusted by the percentage change in collections under the tax levied in Title 67, Chapter 2, Part 2 in the immediately preceding fiscal year over the prior year, which amounts shall be distributed on or before July 31 immediately following the close of that year.

SECTION 11. Tennessee Code Annotated, Title 67, Chapter 2, is amended by adding the following new part:

67-2-201. The title of this part is, and may be cited as, "The Tennessee Flat Tax Law of 2002."

67-2-202.

(a) As used in this part, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of revenue or the commissioner's designee.

(2) "Department" means the department of revenue.

(3) "Dependent" means dependent as that term is defined in Section 152 of the Internal Revenue Code.

(3) "Estimated tax" means the amount that the taxpayer estimates to be the taxpayer's income tax under this part for the taxable year less the amount which the taxpayer estimates to be the sum of any credits allowable for tax withheld.

(4) "Individual" means a natural person.

(5) "Internal Revenue Code" means Title 26 of the United States Code as effective during the year in which the tax under this part is determined.

(6) "Nonresident individual" means any natural person who is not a resident of this state for any portion of the taxable year.

(7) "Nonresident trust or estate" means any trust or estate other than a resident trust or estate or a part-year resident trust.

(8) "Partner" means a partner as defined in Section 7701(a)(2) of the Internal Revenue Code and the regulations adopted thereunder, as from time to time amended. With respect to any reference in this part, or in rules adopted under this part, to pass-through entities, "partner" shall include a member of a limited liability company that is treated as a partnership for federal income tax purposes, and includes any person who owns, directly or indirectly through one or more pass-through entities, an interest in another pass-through entity.

(9) "Partnership" means a partnership as defined in section 7701(a)(2) of the Internal Revenue Code and the regulations adopted thereunder, as from time to time amended, and any reference in this part, or in rules adopted under this part, to a partnership shall include a limited liability company that is treated as a partnership for federal income tax purposes.

(10) "Part-year resident individual" means any natural person who is not either a resident of this state for the entire taxable year or a nonresident of this state for the entire taxable year.

(11) "Part-year resident trust" means any trust that is not either a resident trust or a nonresident trust for the entire taxable year.

(12) "Pass-through entity" means any partnership of any kind whatsoever, any limited liability company or other entity treated as a partnership for purposes of federal income taxation, and any S corporation.

(13) "Person" means any natural person, association, corporation, partnership, limited liability company, trust, estate, and any other entity of any kind whatsoever.

(14) "Resident individual" means any natural person:

(A) Who is domiciled in this state; provided, that a person shall not be deemed a resident individual if the person:

(i) Maintains no permanent place of abode in this state;

(ii) Maintains a permanent place of abode elsewhere; and

(iii) Spends in the aggregate not more than thirty (30) days of the taxable year in this state;

(B) Who is not domiciled in this state but maintains a permanent place of abode in this state and is in this state for an aggregate of more than one hundred eighty-three (183) days of the taxable year, unless such person, not being domiciled in this state, is in the armed forces of the United States.

(15) "Resident trust or estate" means:

(A) The estate of a decedent who at the time of death was a resident of this state;

(B) The estate of a person who, at the time of commencement of a case under Title 11 of the United States Code, was a resident of this state;

(C) A trust, or a portion of a trust, consisting of property transferred by will of a decedent who at the time of death was a resident of this state; and

(D) A trust, or a portion of a trust, consisting of the property of:

(i) A person who was a resident of this state at the time the property was transferred to the trust if the trust was then irrevocable;

(ii) A person who, if the trust was revocable at the time the property was transferred to the trust, and has not subsequently become irrevocable, was a resident of this state at the time the property was transferred to the trust; or

(iii) A person who, if the trust was revocable when the property was transferred to the trust but the trust has subsequently become irrevocable, was a resident of this state at the time the trust became irrevocable.

(16) "S corporation" means any corporation that is an S corporation for federal income tax purposes.

(17) "Taxable year" means the year defined in Section 67-2-205.

(18) "Taxpayer" means any person, trust or estate subject to the tax levied by this part, including any pass-through entity referenced in Section 67-2-215.

(19) "Trust" means an arrangement that is ordinarily created either by a will or by an inter vivos declaration whereby a trustee or trustees take title to property for the purpose of protecting or conserving it for beneficiaries and that, under 26 C.F.R. § 301.7701-4, is classified and treated as a trust (and not as an association, under 26 C.F.R. § 301.7701-2, or partnership, under 26 C.F.R. § 301.7701-3) for federal income tax purposes. "Trust" does not include any real estate mortgage investment conduit, as defined in section 860D of the Internal Revenue Code, that is created as a trust, or any other entity described in section 67-4-2008(a)(9).

(b) Any term used in this part shall have the same meaning as when used in a comparable context in the laws of the United States relating to income taxes unless a different meaning is provided or clearly required.

67-2-203. (a) The tax levied by this part is declared to be a tax on the following:

(1) The privileges of engaging in a business, profession, occupation, trade, employment, enterprise, or endeavor for monetary gain; of investing or depositing money or capital; of selling one's labor or property; of engaging in a lease or rental; of benefiting from a pension, trust, annuity, or similar account; of applying one's talents, skills, time, efforts, resources, or property for monetary gain; of receiving income or earnings; and of enjoying the protections and benefits provided by government;

(2) Income as a species of intangible personal property; and

(3) Income;

Provided, however, if any of the categories or subcategories contained in this subsection are determined by a court of competent jurisdiction to be beyond the authority of the general assembly to tax, then the tax levied by this part shall not be construed to be a tax on the categories or subcategories determined to be invalid. If the tax levied by this part is construed to be solely a tax on the privileges specified in subsection (a)(1), then any income which does not derive from those specified privileges determined to be valid objects of the General Assembly's taxing authority shall not be included in the measure of the tax levied by this part, any other provision of this act to the contrary notwithstanding.

(b) It is an offense to engage in any of the privileges enumerated in subsection (a)(1) that produce income that is used to measure the tax levied by this part without paying the tax in accordance with the provisions of this part.

(c) The tax levied by this part is for state purposes only, and no county or municipality shall have power to levy any like tax.

67-2-204.

(a)(1) Except as provided in subdivision (2) of this subsection, for tax years beginning on or after January 1, 2003, there is hereby levied on each resident single individual, resident married individual filing separately, married persons filing jointly, resident estate, and resident trust, a tax equal to four and one-half percent (4.5%) per annum of Tennessee adjusted gross income.

(2) The tax levied by this part shall not apply to Tennessee adjusted gross income that is equal to or less than the following amounts:

(i) Fifteen thousand dollars (\$15,000) for single individuals;

(ii) Thirty thousand dollars (\$30,000) for resident married individuals filing jointly; and

(iii) Twenty-two thousand fifty dollars (\$22,050) for resident single heads of households.

(3) The return filing and withholding requirements of this part shall not apply, and no tax shall be levied, on any resident single individual, resident married individual filing separately, resident single head of household, married persons filing jointly, resident estate, or resident trust that is not required by federal law, by reason of the amount of its gross or total income for federal income tax purposes, to file a federal tax return.

(b) There is hereby levied on each nonresident individual of this state a tax equal to the product of an amount equal to the tax computed as if such nonresident were a resident, multiplied by a fraction, the numerator of which is the nonresident's Tennessee adjusted gross income derived from or connected with sources within this state and the denominator of which is the nonresident's Tennessee adjusted gross income; provided, if the nonresident's Tennessee adjusted gross income is less than the nonresident's Tennessee adjusted gross income derived from or connected with sources within this state, then the nonresident's Tennessee adjusted gross income derived from or connected with sources within this state shall be applied to subsection (a) of this section for the purposes of determining the tax pursuant to this section. The provisions of this subsection shall also apply to nonresident trusts and estates, and wherever reference is made in this subsection to nonresidents of this state, such reference shall be construed to include nonresident trusts and estates; provided any reference to a nonresident's Tennessee adjusted gross income derived from sources within this state or to a nonresident's Tennessee adjusted gross income shall be construed, in the case of a nonresident trust or estate, to mean the nonresident trust or estate's Tennessee adjusted gross income derived from sources within this state and the nonresident trust or estate's Tennessee adjusted gross income, respectively.

(c) There is hereby levied on the Tennessee adjusted gross income of each part-year resident individual, derived from or connected with sources within this state, a tax which shall be a product equal to the tax computed as if such part-year resident were a resident, multiplied by a fraction, the numerator of which is the part-year resident's Tennessee adjusted gross income derived from or connected with sources within this state, as described in Section 67-2-209, and the denominator of which is the part-year resident's Tennessee adjusted gross income; provided, if the part-year resident's Tennessee adjusted gross income is less than such part-year resident's Tennessee adjusted gross income derived from or connected with sources within this state, then such part-year resident's Tennessee adjusted gross income derived from or connected with sources within this state shall be applied to subsection (a) of this section for purposes of determining the tax pursuant to this section. The provisions of this subsection shall apply to part-year resident trusts, and wherever reference is made in this subsection to part-year residents, such reference shall be construed to include part-year resident trusts; provided, any reference to a part-year resident's Tennessee adjusted gross income derived from sources within this state or a part-year resident's Tennessee adjusted gross income shall be construed, in the case of a part-year resident trust, to mean the part-year resident trust's Tennessee adjusted gross income derived from sources within this state and the part-year resident trust's Tennessee adjusted gross income, respectively.

(d) Any person exempt from federal income tax by reason of its purposes or activities shall be exempt from tax levied by this part, but such person is not exempt from the reporting and withholding requirements imposed by this part.

67-2-205.

(a) For purposes of the tax levied by this part, a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income tax purposes, and a taxpayer's method of accounting shall be the same as the taxpayer's method of accounting for federal income tax purposes. If no method of accounting has been regularly used by the taxpayer, Tennessee adjusted gross income shall be computed under such method that in the opinion of the commissioner fairly reflects income.

(b) If a taxpayer's taxable year is changed for federal income tax purposes, the taxable year for purposes of the tax under this part shall be similarly changed. If a taxpayer's method of accounting is changed for federal income tax purposes, the method of accounting for purposes of this part shall similarly be changed.

(c) In computing a taxpayer's Tennessee adjusted gross income for any taxable year under a method of accounting different from the method under which the taxpayer's Tennessee adjusted gross income for the previous year was computed, there shall be taken into account those adjustments that are determined, under rules adopted by the commissioner, to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted.

(d) If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax that results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two (2) years, during which the taxpayer used the method of accounting from which the change is made. If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year that is attributable to the receipt of installment payments properly accrued in a prior year, shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments.

67-2-206.

(a) For purposes of this part, "Tennessee adjusted gross income" of a natural person (resident, nonresident, and part-year resident individual) is defined as the person's federal adjusted gross income, adjusted as provided in this section. Except as provided in Section 67-2-229, filing status must be the same as the federal income tax filing status for the same taxable year.

(b) There shall be added to federal adjusted gross income the following amounts:

(1) To the extent not properly includable in gross income for federal income tax purposes, any interest income from obligations issued by or on behalf of any state, political subdivision thereof, or public instrumentality, state or local authority, district or similar public entity, exclusive of such income from obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district or similar public entity created under the laws of the state of Tennessee, and exclusive of any such income with respect to which taxation by any state is prohibited by federal law;

(2) To the extent included in gross income for federal income tax purposes for the taxable year, the total taxable amount of a lump sum distribution for the taxable year deductible from such gross income in calculating federal adjusted gross income; and

(3) To the extent properly includable in determining the net gain or loss from the sale or other disposition of capital assets for federal income tax purposes, any loss from the sale or exchange of obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district or similar public entity created under the laws of the state of Tennessee, in the income year such loss was recognized; provided that this subdivision (3) shall apply only to obligations the terms of which specifically exempt capital gains from taxation measured by income.

(c) There shall be subtracted from federal adjusted gross income the following amounts:

(1) For each dependent of a taxpayer or taxpayers in the case of a jointly filed return, excluding such taxpayer and spouse, an exemption of one thousand five hundred dollars (\$1,500). For purposes of this exemption, no dependent may be claimed by more than one (1) taxpayer and the number of dependents claimed must be the same number of dependents claimed on the taxpayer's federal return for the same tax year;

(2) To the extent properly includable in gross income for federal income tax purposes, any income with respect to which taxation by any state is prohibited by federal law;

(3) The amount of any refund or credit for overpayment of taxes measured by income levied by this state, or any other state of the United States or the District of Columbia, to the extent properly includable in gross income for federal income tax purposes;

(4) To the extent properly includable in gross income for federal income tax purposes, any railroad retirement benefits with respect to which taxation by any state is prohibited by federal law;

(5) To the extent properly includable in gross income for federal income tax purposes, any interest income from obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district or similar public entity created under the laws of the state of Tennessee;

(6) To the extent properly includable in determining the net gain or loss from the sale or other disposition of capital assets for federal income tax purposes, any gain from the sale or exchange of obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district or similar public entity created under the laws of the state of Tennessee, in the income year such gain was recognized; provided that this subdivision (5) shall apply only to obligations the terms of which specifically exempt capital gains from taxation measured by income; and

(7) Fifty percent (50%) of any net long-term capital gain. For this purpose, "net long-term capital gain" shall mean any long-term capital gain properly includable in gross income for federal income tax purposes, less any long-term capital loss or carryover thereof included in the computation of federal gross income for the same tax year; provided, that such net long-term capital gain has not been deducted under some other provision of this subsection.

67-2-207.

(a) The income of a nonresident individual derived from or connected with sources within this state shall be the sum of the net amount of items of income, gain, loss and deduction entering into the taxpayer's Tennessee adjusted gross income which are derived from or connected with sources within this state, including, but not limited to:

(1) Compensation paid to the taxpayer as an employee, independent contractor, or otherwise, for personal services performed in this state;

(2) Income from a business, trade or profession carried on in this state;

(3) The taxpayer's distributive share of partnership income, gain, loss and deduction, determined under Section 67-2-212;

(4) The taxpayer's pro rata share of S corporation income, gain, loss and deduction, determined under Section 67-2-212; and

(5) The taxpayer's share of estate or trust income, gain, loss and deduction, determined under Section 67-2-213.

(b) If a husband and wife determine their federal income tax on a joint return but determine their Tennessee income taxes separately, they shall determine their incomes derived from or connected with sources within this state separately as if their federal adjusted gross incomes had been determined separately.

(c) For purposes of this section, "derived from or connected with sources within this state" is defined as such term is defined in Section 67-2-210.

67-2-208.

(a) Tennessee adjusted gross income of a resident trust or estate shall mean the taxable income of the fiduciary of such trust or estate derived from such trust or estate as determined for purposes of the federal income tax, to which there shall be added or subtracted, as the case may be, the share of the trust or estate in the Tennessee fiduciary adjustment, as defined in subsection (c) of this section.

(b) If any trust or portion of a trust, other than a trust created by the will of a decedent, has one (1) or more nonresident noncontingent beneficiaries, the Tennessee adjusted gross income of the trust shall be modified as follows:

The Tennessee adjusted gross income of the trust shall be the sum of:

(1) All such income derived from or connected with sources within this state; and

(2) That portion of such income derived from or connected with all other sources, which is derived by applying to all such income derived from or connected with all other sources a fraction, the numerator of which is the number of resident noncontingent beneficiaries, and the denominator of which is the total number of noncontingent beneficiaries.

(c) "Tennessee fiduciary adjustment" means the net positive or negative total of the following items relating to income, gain, loss or deduction of a trust or estate:

(1) There shall be added together:

(A) Any interest income from obligations issued by or on behalf of any state, political subdivision thereof, or public instrumentality, state or local authority, district, or similar public entity, exclusive of such income from obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district, or similar public entity created under the laws of the state of Tennessee and exclusive of any such income with respect to which taxation by any state is prohibited by federal law;

(B) To the extent properly includable in determining the net gain or loss from the sale or other disposition of capital assets for federal income tax purposes, any loss from the sale or exchange of obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district, or similar public entity created under the laws of the state of Tennessee, in the income year such loss was recognized; provided that this item (B) shall apply only to obligations the terms of which specifically exempt capital gains from taxation measured by income; and

(C) To the extent deductible in determining federal taxable income prior to deductions relating to distributions to beneficiaries, any interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest on which is exempt from tax under this part.

(2) There shall be subtracted from the sum of such items:

(A) To the extent properly includable in gross income for federal income tax purposes, any income with respect to which taxation by any state is prohibited by federal law;

(B) To the extent properly includable in gross income for federal income tax purposes, any interest income from obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district, or similar public entity created under the laws of the state of Tennessee;

(C) To the extent properly includable in determining the net gain or loss from the sale or other disposition of capital assets for federal income tax purposes, any gain from the sale or exchange of obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district, or similar public entity created under the laws of the state of Tennessee, in the income year such gain was recognized; provided that this item (C) shall apply only to obligations the terms of which specifically exempt capital gains from taxation measured by income; and

(D) The amount of any refund or credit for overpayment of income taxes levied by this state, to the extent properly includable in gross income for federal income tax purposes for the taxable year and to the extent deductible in determining federal taxable income prior to deductions relating to distributions to beneficiaries for the preceding taxable year.

(d)(1) The respective shares of a trust or estate and its beneficiaries, including, solely for the purpose of this allocation, nonresident beneficiaries, in the Tennessee fiduciary adjustment shall be in proportion to their respective shares of federal distributable net income of the trust or estate.

(2) If the trust or estate has no federal distributable net income for the taxable year, the share of each beneficiary in the Tennessee fiduciary adjustment shall be in proportion to the beneficiary's share of the trust or estate income for such year, determined under local law or the governing instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of the Tennessee fiduciary adjustment shall be allocated to the trust or estate.

(3) The commissioner may by rule establish such other method or methods of determining to whom the items comprising the fiduciary adjustment shall be attributed as may be appropriate and equitable. Such other method may be used by the fiduciary whenever the allocation of the fiduciary adjustment pursuant to subdivisions (1) and (2) of this subsection would result in an inequity that is substantial both in amount and in relation to the amount of the fiduciary adjustment.

(e) For purposes of this section, "derived from or connected with sources within this state" is defined as such term is defined in Section 67-2-210.

67-2-209.

(a) For purposes of this part, the income derived from or connected with sources within this state of a part-year resident individual shall be the sum of the following:

(1) Tennessee adjusted gross income for the period of residence, computed as if the taxpayer's taxable year for Tennessee income tax purposes were limited to the period of residence; and

(2) The income derived from or connected with sources within this state determined in accordance with Section 67-2-207 for the period of nonresidence as if the taxpayer's taxable year for Tennessee income tax purposes were limited to the period of nonresidence.

(b) For purposes of this part, the income derived from or connected with sources within this state of a part-year resident trust shall be the sum of the following:

(1) The share of Tennessee adjusted gross income for the period of residence, determined as if such trust were an individual whose taxable year for federal income tax purposes were limited to the period of residence, allocated to the trust in accordance with the methods of allocation set forth in Section 67-2-208; and

(2) The income derived from or connected with sources within this state for the period of nonresidence determined in accordance with Section 67-2-213 as if its taxable year for federal income tax purposes were limited to the period of nonresidence.

(c) For purposes of this section, "derived from or connected with sources within this state" is defined as such term is defined in Section 67-2-210.

67-2-210.

(a) For purposes of this part, except as may be otherwise provided in this part, the term "derived from or connected with sources within this state" is defined in this section.

(b) Items of income, gain, loss and deduction derived from or connected with sources within this state shall be those items attributable to:

(1) The ownership or disposition of any interest in real, tangible or intangible personal property in this state;

(2) A business, trade, profession or occupation carried on in this state; and

(3) In the case of a shareholder of an S corporation, the ownership of shares issued by such corporation, to the extent determined under Section 67-2-212.

(4) In the case of a partner, the ownership interest in the partnership, to the extent determined under Section 67-2-212.

(c) Items of income, gain, loss and deduction derived from or connected with Tennessee sources do not include such items attributable to intangible personal property of a nonresident individual, including annuities, dividends, interest, and gains and losses from the disposition of intangible personal property, except to the extent attributable to property employed in a business, trade, profession or occupation carried on in Tennessee.

(1) Intangible personal property is employed in a business, trade, profession or occupation carried on in this state if such property's possession and control have been localized in connection with a business, trade, profession or occupation in Tennessee, so that the property's substantial use and value attach to and become an asset of such business, trade, profession or occupation.

(2) If intangible personal property of a nonresident is employed in a business, trade, profession or occupation carried on in Tennessee, the entire income from such property, including gains from its sale, regardless of where the sale is consummated, is income derived from or connected with sources within this state. Where a nonresident individual sells real or tangible personal property located in Tennessee, and as a result of such sale receives intangible personal property (for example, a note) that generates interest income or capital gain income, such interest income is generally not attributable to the sale of the real or tangible personal property but is attributable to the intangible personal property; however, such capital gain income is attributable to the sale of the real or tangible personal property located in Tennessee. Therefore, such interest income to a nonresident does not constitute income derived from or connected with Tennessee sources. However, interest income derived from an instrument received as a result of a sale of real or tangible personal property located in Tennessee, where the instrument is employed in a business, trade, profession or occupation carried on in this state, does constitute income derived from or connected with Tennessee sources.

(3) A nonresident individual, other than a dealer holding property primarily for sale to customers in the ordinary course of the dealer's trade or business, shall not be deemed to carry on a trade, business, profession or occupation in this state solely by reason of the purchase or sale of intangible property, or the purchase, sale or writing of stock option contracts, or both, for the nonresident's own account.

(d) Deductions with respect to net operating losses shall be based solely on income, gain, loss and deduction derived from or connected with sources within this state, under rules adopted by the commissioner, but otherwise shall be determined in the same manner as the corresponding federal deductions.

(e) A business, trade, profession or occupation (as distinguished from personal services as an employee) is carried on within Tennessee by a nonresident individual:

(1) If the individual occupies, maintains or operates desk space, an office, a shop, a store, a warehouse, a factory, an agency, or other place where such nonresident's affairs are systematically and regularly carried on, notwithstanding the occasional consummation of isolated transactions outside Tennessee; or

(2) If activities in connection with the business are conducted in Tennessee with a fair measure of permanency and continuity.

(f) If a nonresident individual, or a partnership of which the nonresident individual is a member, carries on a business, trade, profession or occupation (as distinguished from personal services as an employee) both within and without Tennessee, the nonresident taxpayer may elect, or the commissioner may require the taxpayer, to allocate (as provided in subdivision (1) of this subsection), or to apportion (as provided in subdivision (2) of this subsection), to Tennessee on a fair and equitable basis, the items of income, gain, loss and deduction attributable to such business, trade, profession or occupation. For this purpose, compensation paid to nonresident employees and officers shall be attributed to Tennessee in accordance with the provisions of this subsection. Once an individual elects, or the commissioner requires in writing, the use of either method (allocation or apportionment), the taxpayer shall continue to use that method unless, after application in writing to the commissioner, the commissioner makes a written determination that the method used no longer reflects income that is fairly attributable to Tennessee. The methods to be used for allocation or apportionment are set forth in subdivisions (1) and (2) below.

(1) If the books of the business are kept so as regularly to disclose, to the satisfaction of the commissioner, the proportion of the net amount of the items of income, gain, loss and deduction derived from or connected with Tennessee sources, the Tennessee nonresident income tax return of the nonresident individual shall disclose the total amount of such items, the net amount of such items allocated to Tennessee, and the basis upon which such allocation is made. If income is reported using this method, the taxpayer shall consistently allocate the amounts of income on returns filed with any other state in which the taxpayer carries on business where such states permit allocation on the basis of separate books and records.

(2) If the books and records of the business do not disclose, to the satisfaction of the commissioner, the proportion of the net amount of the items of income, gain, loss and deduction attributable to the activities of the business carried on in Tennessee, such proportion shall be determined consistently with the provisions of Section 67-4-2012, unless the commissioner by rule provides for some other method of apportionment.

(g) The Tennessee adjusted gross income derived from or connected with Tennessee sources of a nonresident individual rendering personal services as an employee includes the compensation for personal services entering into the individual's Tennessee adjusted gross income, but only if, and to the extent that, the services were rendered within Tennessee.

(1) When a nonresident employee, who is compensated on an hourly, daily, weekly or monthly basis, is able to establish the exact amount of pay received for services performed in Tennessee, such amount is included in Tennessee adjusted gross income derived from or connected with sources within this state.

(2) When no such exact determination of pay received for services performed in Tennessee is possible, the income of employees, who are compensated on an hourly, daily, weekly or monthly basis shall be apportioned to Tennessee by multiplying the total compensation wherever earned from the employment by a fraction, the numerator of which is the number of days spent working in Tennessee and the denominator of which is the total working days both within and without Tennessee. The product is included in Tennessee adjusted gross income derived from or connected with sources within this state. The term "total working days" does not include days on which the employee was not required to work, such as holidays, sick days, vacations and paid or unpaid leave. For purposes of this section, when a working day is spent working partly in Tennessee and partly elsewhere, it is considered one-half ($1/2$) of a day spent working in Tennessee.

(3) If a nonresident employee performs services for more than one employer both within and without Tennessee and is unable to determine the exact amounts earned or derived in Tennessee, such employee shall determine separately for each employer the compensation attributable to Tennessee sources. The sum of the amounts of compensation attributable to Tennessee sources shall be included in determining the Tennessee adjusted gross income derived from or connected with sources within this state.

(h) Compensation paid by the United States for active service in the armed forces of the United States, performed by an individual not domiciled in this state, shall not constitute income derived from or connected with sources within this state.

(i) The Tennessee adjusted gross income derived from or connected with sources within Tennessee of a nonresident member of a professional athletic team includes that proportion of such individual's compensation received for services rendered as a member of such team that the duty days spent within Tennessee rendering services for such team in any manner during the taxable year bears to the total number of duty days rendering services for such team in any manner during the taxable year. In determining whether duty days are spent within Tennessee, travel days are duty days spent within Tennessee if Tennessee is the travel destination and are not duty days spent within Tennessee if Tennessee is not the travel destination; provided, when a game is scheduled to be played on a travel day, the duty day is considered to be spent where the game is scheduled to be played.

(j) For purposes of subsection (i), the following definitions apply.

(1) "Member of a professional athletic team" includes, but is not limited to, active players, players on the disabled list, and any other persons who are required to travel with and perform services on behalf of a professional athletic team, on a regular basis, including coaches, managers, trainers and equipment managers.

(2) "Duty days" means all days, from the first day of the official pre-season training period of the professional athletic team through the day of the last game, including post-season games, in which such team competes or is scheduled to compete during the taxable year. "Duty days" include game days, travel days and practice days. For a member of a professional athletic team who renders services for a team on a day that is not otherwise a "duty day" (e.g., representing a team at an all-star game), the member's "duty days" include such a day. "Duty days" for any member joining a team during the season shall begin on the day such person becomes a member and for any member leaving a team during the season shall end on the day such person ceases to be a member. "Duty days" do not include any try-out or pre-season cut days that a player shall survive in order to obtain a contract or any days for which a member is not compensated and is not rendering services for the team in any manner because such person has been suspended without pay and prohibited from performing any services for the team.

(3) "Duty days spent within Tennessee" means duty days on which a member of a professional athletic team renders services, or is available to render services, for the member's team, within Tennessee. Days when a member is not available to render services for the team because of an injury are "duty days" for that member, but are not "duty days spent within Tennessee" for that member unless the team is based in Tennessee.

(4) "Compensation received for services rendered as a member of a professional athletic team" means the total compensation received for the official pre-season training period through the last game in which the team competes or is scheduled to compete during the taxable year, plus any additional compensation received for rendering services for the team on a date that is not otherwise a "duty day" (e.g., compensation for representing a team at an all-star game) during the taxable year. "Compensation received for services rendered as a member of a professional athletic team" includes, but is not limited to, salaries, wages, guaranteed payments except as otherwise provided herein, bonuses, strike benefits, severance pay, and termination pay. Bonuses are includable in "compensation received for services rendered as a member of a professional athletic team" if they are earned as a result of play during the season or for playing in championship, playoff or "all star" games. Bonuses are also so includable if paid for signing a contract, unless all of the following conditions are met:

(A) Is solely in consideration of a nonresident athlete giving up amateur and free agent status and agreeing to be the exclusive property of the team;

(B) Is not conditional upon the athlete playing any games, or performing any subsequent services, for the team, or even making the team;

(C) Is separate from the payment of salary or any other compensation; and

(D) Is nonrefundable.

(k) It shall be presumed that the method provided under subsection (i) is a fair and equitable method of determining the proportion of compensation received for services rendered as a member of a professional athletic team that is derived from or connected with sources within Tennessee. However, the portion of compensation received for services rendered as a member of a professional athletic team that is derived from or connected with sources within Tennessee may be determined on the basis of a method other than that provided under subsection (i), if:

(1) The member establishes, to the satisfaction of the commissioner, that another method is fairer and more equitable; or

(2) In the discretion of the commissioner, the commissioner determines that the method provided under subsections (i) and (j) does not fairly and equitably reflect the proportion of compensation received for services rendered as a member of a professional athletic team that is derived from or connected with sources within Tennessee.

(i) In the case of a nonresident entertainer or athlete (other than a member of a professional athletic team), who is paid specifically for a performance or athletic event in Tennessee, the entire amount received is included in Tennessee adjusted gross income derived from or connected with sources within Tennessee if the entertainer or athlete is carrying on a business, trade, profession or occupation in Tennessee (and entertainer or athlete's presence for business in Tennessee is not casual and isolated).

(m) In the case of a nonresident entertainer who is not paid specifically for a performance in Tennessee, the entertainer's Tennessee adjusted gross income derived from or connected with sources within Tennessee includes that proportion of the entertainer's income received from performances within and without Tennessee that the number of performances that the entertainer gave (or, in the case of an understudy, was available to give) within Tennessee during the taxable year bears to the total number of performances that the entertainer was obligated to perform (or, in the case of an understudy, was obligated to be available to perform), under contract or otherwise, within and without Tennessee during the taxable year.

(n) In the case of a nonresident athlete (other than a member of a professional athletic team) who is not paid specifically for athletic events in Tennessee, the athlete's Tennessee adjusted gross income derived from or connected with sources within Tennessee includes that proportion of the athlete's income received from athletic events within and without Tennessee that the number of athletic events within Tennessee in which the athlete played during the taxable year bears to the total number of athletic events within and without Tennessee in which the athlete played during the taxable year.

(o) Income directly or indirectly derived by an athlete, entertainer or performing artist, from closed-circuit and cable television transmissions of an event, other than events occurring on a regularly scheduled basis, taking place within this state as a result of the rendition of services by such athlete, entertainer or performing artist, shall constitute income derived from or connected with sources within this state only to the extent that such transmissions were received or exhibited within this state.

67-2-211.

(a) In determining the Tennessee adjusted gross income of a resident partner of a partnership or a resident shareholder of an S corporation, any adjustments described in Section 67-2-206, which relates to an item of partnership or S corporation income, gain, loss or deduction, shall be made in accordance with the partner's distributive share or a shareholder's pro rata share, for federal income tax purposes, of the item to which the modification relates. Where a partner's distributive share or a shareholder's pro rata share of any such item is not required to be taken into account separately for federal income tax purposes, the partner's or shareholder's share of such item shall be determined in accordance with the partner's or shareholder's share, for federal income tax purposes, of partnership or S corporation taxable income or loss generally.

(b) Each item of partnership and S corporation income, gain, loss or deduction shall have the same character for a partner or shareholder under this part as for federal income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for a partner or shareholder as if it were realized directly from the source from which it was realized by the partnership or S corporation or as if it were incurred in the same manner as it was incurred by the partnership or S corporation.

(c) Where a partner's distributive share of an item of partnership income, gain, loss or deduction is determined for federal income tax purposes by special provision in the partnership agreement with respect to such item, and where the principal purpose of such provision is the avoidance or evasion of tax under this part, the partner's distributive share of such item, and any modification required with respect thereto, shall be determined as if the partnership agreement made no special provision with respect to such item.

67-2-212.

(a) The Tennessee adjusted gross income derived from or connected with sources within this state of a nonresident partner includes the partner's distributive share of all items of partnership income, gain, loss and deduction entering into federal adjusted gross income to the extent such items are derived from or connected with Tennessee sources.

(b) In determining the sources of a nonresident partner's income, no effect shall be given to a provision in the partnership agreement which:

- (1) Characterizes payments to the partner as being for services or for the use of capital;

(2) Allocates to the partner, as income or gain from sources without Tennessee, a greater proportion of the partner's distributive share of partnership income or gain than the ratio of partnership income or gain from sources without this state to partnership income or gain from all sources, except as authorized in subsection (c) of this section; or

(3) Allocates to the partner a greater proportion of a partnership item of loss or deduction connected with sources within this state than the partner's proportionate share, for federal income tax purposes, of partnership loss or deduction generally, except as authorized in subsection (c) of this section.

(c)(1) The character of partnership or corporation items for a nonresident partner or S corporation shareholder shall be determined in accordance with Section 67-2-211.

(2) The effect of a special provision in a partnership agreement, other than a provision referred to in subsection (b) of this section, having the principal purpose of avoidance or evasion of tax under this part, shall be determined under subsection (c) of Section 67-2-211.

(d) The commissioner may, on application, authorize the use of such other methods of determining a nonresident partner's portion of partnership items derived from or connected with sources within this state, and the modifications related thereto, as may be appropriate and equitable, on such terms and conditions as the commissioner may require.

(e) The Tennessee adjusted gross income derived from or connected with sources within this state of a nonresident individual, who is a shareholder of an S corporation doing business or having the right to do business in this state, as defined in Section 67-4-2004(7), includes such shareholder's pro rata share of the S corporation's separately computed income or loss entering into federal adjusted gross income to the extent such income or loss is derived from or connected with Tennessee sources.

(f) The Tennessee adjusted gross income derived from or connected with sources within this state of a nonresident individual who is a shareholder of an S corporation doing business or having the right to do business in this state, as defined in Section 67-4-2004(7), does not include such shareholder's pro rata share of the S corporation's nonseparately computed income or loss entering into federal adjusted gross income.

(g) With respect to a nonresident individual who is a shareholder of an S corporation doing business or having the right to do business in Tennessee, as defined in Section 67-4-2004(7), the portion of such shareholder's pro rata share of the modifications described in Section 67-2-206 relating to the S corporation's:

(1) Separately computed income or loss that is derived from or connected with sources within Tennessee is to be determined so as to accord with the definition of the term "derived from or connected with sources within this state" set forth in Section 67-2-210;

(2) Nonseparately computed income or loss is considered to be derived from or connected with sources without Tennessee.

(h) With respect to a nonresident shareholder of an S corporation neither doing business nor having the right to do business in Tennessee, as defined in Section 67-4-2004(7), no portion of such shareholder's pro rata share of the S corporation's separately or nonseparately computed income or loss, or the adjustments described in Section 67-2-206 that relate to S corporation items of income or gain, is considered to be derived from or connected with sources within Tennessee.

67-2-213.

(a) The income derived from or connected with sources within this state of a nonresident trust or estate shall be determined as follows:

(1) There shall be determined its share of income, gain, loss and deduction from Tennessee sources under Section 67-2-212.

(2) There shall be added or subtracted, as the case may be, the amount derived from or connected with Tennessee sources of any income, gain, loss and deduction which would be included in the determination of federal adjusted gross income if the trust or estate were an individual and which is recognized for federal income tax purposes but excluded from the definition of federal distributable net income of the trust or estate.

(b) Deductions with respect to net operating losses shall be based solely on income, gains, losses and deductions derived from or connected with sources within this state, under rules of the commissioner, but otherwise determined in the same manner as the corresponding federal deductions.

(c) The share of a nonresident trust or estate in trust or estate income, gain, loss and deduction derived from or connected with sources within this state; and the share of a nonresident beneficiary of any trust or estate, in trust or estate income, gain, loss and deduction derived from or connected with sources within this state; shall be determined as follows:

(1) There shall be determined the items of income, gain, loss and deduction which are derived from or connected with sources within this state, which would be included in the determination of federal adjusted gross income if the trust or estate were an individual and which enter into the definition of federal distributable net income of the trust or estate for the taxable year, including any such items from another trust or estate of which the subject trust or estate is a beneficiary. The determination of source shall be made in accordance with the provisions of Section 67-2-207 in the same manner as for a nonresident individual.

(2) The amounts determined under subdivision (1) of this subsection shall be allocated among the trust or estate and its beneficiaries, including, solely for the purpose of this allocation, resident beneficiaries, in proportion to their respective shares of federal distributable net income.

(3) The amount allocated under subdivision (2) of this subsection shall have the same character under this part as for federal income tax purposes. Where an item entering into the computation of such amounts is not characterized for federal income tax purposes, it shall have the same character as if it were realized directly from the source from which it was realized by the trust or estate, or as if it were incurred in the same manner as it was incurred by the trust or estate.

(d)(1) If the trust or estate has no federal distributable net income for the taxable year, the share of each beneficiary, including, solely for the purpose of this allocation, resident beneficiaries, in the net amount, determined under subdivision (1) of subsection (a) of this section, shall be in proportion to the beneficiary's share of the trust or estate income for such year, under local law or the governing instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of such net amount shall be allocated to the trust or estate.

(2) The commissioner may by rule establish such other method or methods of determining the respective shares of the beneficiaries and of the trust or estate in its income derived from sources within this state as may be appropriate and equitable. Such method may be used by the fiduciary whenever the allocation of such respective shares under subsections (c) and (d) of this section would result in an inequity that is substantial in amount.

67-2-214.

(a) Any resident individual or part-year resident individual of this state shall be allowed a credit against the tax otherwise due under this part in the amount of any income tax, levied on such resident or part-year resident for the taxable year by another state of the United States or the District of Columbia, on income derived from sources therein and which income is also subject to tax under this part.

(b) In the case of a resident individual, the credit provided under this section shall not exceed the proportion of the tax otherwise due under this part that the amount of the taxpayer's Tennessee adjusted gross income derived from or connected with sources in the other taxing jurisdiction bears to such taxpayer's Tennessee adjusted gross income under this part.

(c) In the case of a part-year resident individual, the credit provided under this section shall not exceed the proportion of the tax otherwise due during the period of residency under this part that the amount of the taxpayer's Tennessee adjusted gross income derived from or connected with sources in the other jurisdiction during the period of residency bears to such taxpayer's Tennessee adjusted gross income during the period of residency under this part, nor shall the allowance of the credit provided under this section reduce the tax otherwise due under this part to an amount less than what would have been due if the income subject to taxation by such other jurisdiction were excluded from Tennessee adjusted gross income.

(d)(1) If, as a direct result of the change to or correction of a taxpayer's income tax return, filed with another state of the United States or the District of Columbia, by the tax officers or other competent authority of such jurisdiction, the amount of tax of such other jurisdiction that the taxpayer is finally required to pay is different than the amount used to determine the credit allowed to the taxpayer under this section, the taxpayer shall provide notice of such difference to the commissioner by filing, on or before the date that is ninety (90) days after the final determination of such amount, an amended return under this part, and shall concede the accuracy of such determination or state wherein it is erroneous. The commissioner may redetermine, and the taxpayer shall be required to pay, the tax plus interest for any taxable year affected.

(2) If, as a direct result of a taxpayer filing an amended income tax return with another state of the United States or the District of Columbia, the amount of tax of such other jurisdiction that the taxpayer is required to pay is different than the amount used to determine the credit allowed to the taxpayer under this section, the taxpayer shall provide notice of such difference to the commissioner by filing, on or before the date that is ninety (90) days after the date of filing of such amended return, an amended return under this part and shall give such information as the commissioner may require. The commissioner may redetermine and the taxpayer shall be required to pay the tax plus interest for any taxable year affected.

(3) In the case of a redetermination of the tax owing to another state of the United States or the District of Columbia resulting in a taxpayer owing additional taxes levied by this part, the statutory period for the assessment of additional taxes resulting from such redetermination shall not expire prior to two (2) years from the date the commissioner is notified in writing by the taxpayer of such revision. In the event that such redetermination results in a refund of the taxes levied by this part, the commissioner is authorized to make such refund provided the taxpayer makes a refund claim, or the commissioner is in possession of the proper proof of the refund, within three (3) years from the date of such determination by the other state or other such jurisdiction.

(e) A taxpayer shall not be allowed credit under this section if the taxpayer has claimed or will claim a credit against the income tax levied by the other jurisdiction for the tax paid or payable under this part.

(f) There shall be no credit for interest or penalties paid to another state or to the District of Columbia.

67-2-215.

(a)(1)(A) With respect to each of its nonresident partners or shareholders, each pass-through entity, doing business in this state or having income derived from or connected with sources within this state, shall for each taxable period, either:

(i) Timely file with the commissioner an agreement as provided in subdivision (2) of this subsection; or

(ii) Make payment to the commissioner as provided in subdivision (3) or subdivision (4) of this subsection.

(B) Any pass-through entity that timely files an agreement as provided in such subdivision (2) with respect to a nonresident partner or shareholder for a taxable period shall be considered to have timely filed such an agreement for each subsequent taxable period. Any pass-through entity which does not timely file such an agreement for a taxable period shall not be precluded from timely filing such an agreement for subsequent taxable periods.

(2)(A) An agreement under this subdivision shall be an agreement, on a form as may be prescribed by the commissioner, by a nonresident partner or shareholder of the pass-through entity:

(i) To file returns in accordance with all applicable provisions of Title 67 and to make timely payment of all taxes levied on the partner or shareholder by this state measured by the income of the pass-through entity; and

(ii) To be subject to personal jurisdiction in this state for purposes of the collection of all taxes, together with related additions to tax, interest and penalties, levied on the partner or shareholder by this state measured by the income of the pass-through entity.

(B) Such an agreement shall be considered timely filed for a taxable period and for all subsequent taxable periods if it is filed on or before the date the annual return for such taxable period is required to be filed pursuant to Section 67-2-217, including extensions.

(3) For S corporations, the payment shall be in an amount equal to the tax rate provided in Section 67-2-204 multiplied by the sum of:

(A) To the extent derived from or connected with sources within this state as reflected on the S corporation's annual return for the taxable period under Section 67-2-217, the amount of such shareholder's pro rata share of the S corporation's nonseparately computed items, as defined in Section 1366 of the Internal Revenue Code, to the extent includable in the shareholder's Tennessee adjusted gross income; and

(B) To the extent derived from or connected with sources within this state as reflected on the S corporation's annual return for the taxable period under Section 67-2-217, the amount of such shareholder's pro rata share of the S corporation's nonseparately computed items, as defined in Section 1366 of the Internal Revenue Code, to the extent includable, if the shareholder is an individual, in the shareholder's Tennessee adjusted gross income, or, if the shareholder is a trust or estate, in the shareholder's Tennessee adjusted gross income.

(4) For pass-through entities other than S corporations, the payment shall be in an amount equal to the tax rate provided in Section 67-2-204 multiplied by, to the extent derived from or connected with sources within this state as reflected on the entity's annual return for the taxable period under Section 67-2-217, the amount of the subject partner's distributive share of the entity's income determined under Section 704 of the Internal Revenue Code.

(5) Any amount paid by the pass-through entity to this state with respect to any taxable period, pursuant to subdivisions (3) or (4) of this subsection, shall be considered to be a payment by the partner or shareholder on account of the tax measured by income levied on the partner or shareholder for such taxable period pursuant to this part. If the tax years of the pass-through entity and the partner, member or shareholder are different, then the payment by the pass-through entity shall be considered to be a payment by the partner, member or shareholder for the partner's, member's or shareholder's tax year which begins in the tax year of the pass-through entity. A pass-through entity shall be entitled to recover, by off-set or otherwise, a payment made pursuant to this subdivision from the partner or shareholder on whose behalf the payment was made. Any estimated tax installment shall be made on or before the due date of such installment pursuant to Section 67-2-218, and any other payment for a taxable period shall be made at or before the date the annual return for such taxable period is required to be filed pursuant to Section 67-2-217.

(b) In lieu of partners or shareholders of pass-through entities filing separate returns under Section 67-2-218, the commissioner may provide for the filing of a group return for electing nonresident partners or shareholders by a pass-through entity doing business in this state, as defined in Section 67-4-2004(7), or having income derived from or connected with sources within this state. As required by the commissioner, the pass-through entity as agent for the electing partners or shareholders shall make the payments of tax, estimated tax, additions to tax, interest, and penalties otherwise required to be paid by the electing partners or shareholders. The provisions of this subsection shall also apply to trusts and estates, and whenever reference is made in this subsection to pass-through entities and partners, such reference shall be construed as including trusts, estates and beneficiaries thereof.

67-2-216.

(a) In lieu of members of professional athletic teams filing separate returns, under Section 67-2-218, the commissioner may provide for the filing of a composite return for every qualifying nonresident member of a professional athletic team by such team, if such team is doing business in this state or the members of such team have compensation that is received for services rendered as members of such team and that is derived from or connected with sources within this state.

(b) If a professional athletic team is required to file a composite return pursuant to this section, the commissioner may require such team, in lieu of deducting and withholding Tennessee income tax as may otherwise be required under Section 67-2-221, to make payment to the commissioner of tax, estimated tax, additions to tax, interest, and penalties otherwise required to be paid to the commissioner by such qualifying nonresident members.

(c) The commissioner may require a professional athletic team, in lieu of deducting and withholding Tennessee income tax as may otherwise be required under Section 67-2-221, to make payment to the commissioner of tax, estimated tax, additions to tax, interest, and penalties otherwise required to be paid to the commissioner by:

(1) Every resident member, but only with respect to compensation that is received for services rendered as a member of a professional athletic team; and

(2) Every nonresident member who is not a qualifying nonresident member, but only with respect to compensation that is received for services rendered as a member of a professional athletic team and that is derived from or connected with sources within this state.

(d) Any amount paid by a professional athletic team to this state with respect to any taxable period pursuant to this section shall be considered to be a payment by the member on account of the income tax levied on the member for such taxable period pursuant to this part. The team shall be entitled to recover a payment made pursuant to this section from the member on whose behalf the payment was made.

(e) For purposes of this section, "qualifying nonresident member" means a member of a professional athletic team who is a nonresident individual for the entire taxable year, who does not maintain a permanent place of abode in Tennessee at any time during the taxable year, who does not have income derived from or connected with sources within this state other than compensation that is received for services rendered as a member of a professional athletic team and that is derived from or connected with sources within this state.

67-2-217.

(a) Each partnership having any income derived from sources in this state, determined in accordance with the provisions of this part, shall make a return for the taxable year setting forth all items of income, gain, loss and deduction; the name, address and social security or federal employer identification number of each partner, whether or not a resident of this state, who would be entitled to share in the net income if distributed; the amount of the distributive share of each partner derived from or connected with sources within this state; the amount of the distributive share of each partner derived from or connected with sources without this state; and such other pertinent information as the commissioner may prescribe by rules or instructions. Such return shall be filed on or before the fifteenth day of the fourth month following the close of each taxable year. The partnership shall, on or before the day on which such return is filed, furnish to each person, who was a partner during the taxable year, a copy of such information as shown on the return. The provisions of this subsection shall also apply to trusts and estates, and their beneficiaries.

Wherever reference is made in this subsection to partnerships and their partners, such reference shall be construed as including trusts and estates and their beneficiaries, respectively.

(b) Each S corporation doing business in this state, as defined in Section 67-4-2004(7), shall make a return for the taxable year setting forth all items of income, gain, loss and deduction; the name, address and social security or federal employer identification number of each shareholder; the pro rata share of each shareholder of S corporation income derived from or connected with sources within this state; the pro rata share of each shareholder of S corporation income derived from or connected with sources without this state; and such other pertinent information as the commissioner may prescribe by rules or instructions. Such return shall be filed on or before the fifteenth day of the fourth month following the close of each taxable year. The S corporation shall, on or before the day on which such return is filed, furnish to each person, who was a shareholder during the taxable year, a copy of such information as shown on the return.

67-2-218.

(a) A taxpayer with Tennessee adjusted gross income shall file a Tennessee tax return with the commissioner on or before the fifteenth day of the fourth month following the close of the taxpayer's taxable year, containing such information as the commissioner may reasonably require, and on forms as prescribed by the commissioner. The commissioner is authorized to require taxpayers to include with the return copies of their federal tax return, including withholding statements, schedules and forms. The return shall coincide with the tax period covered by the taxpayer's federal return, if any. The commissioner may by rule provide that taxpayers, whose Tennessee adjusted gross income is less than the applicable exemptions provided in Section 67-2-204(a)(2), are not required to file a Tennessee tax return.

(b) Without assessment, notice or demand, the taxpayer shall pay any tax due to the commissioner on or before the due date of the return, without regard to any extension of time for filing the return.

(c) For purposes of this section, there shall be four (4) required installments for each taxable year. The due date for the first required installment is the fifteenth day of the fourth month of the taxable year. The due date for the second required installment is the fifteenth day of the sixth month of the taxable year. The due date for the third required installment is the fifteenth day of the ninth month of the taxable year. The due date for the fourth required installment is the fifteenth day of the first month of the next succeeding taxable year.

(d)(1) Except as provided in subdivision (2) of this subsection, the amount of any required installment shall be twenty-five percent (25%) of the required annual payment, as defined in subsection (c) of this section.

(2)(A) In the case of any required installment, if the taxpayer establishes that the annualized income installment is less than the amount determined under subdivision (1) of this subsection, the amount of such required installment shall be the annualized income installment, and any reduction in a required installment resulting from the application of this subdivision shall be recaptured by increasing the amount of the next required installment by the amount of such reduction and by increasing subsequent required installments to the extent that the reduction has not previously been recaptured under this subdivision.

(B) In the case of any required installment, the annualized income installment is the excess, if any, of:

(i) An amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the Tennessee adjusted gross income for months in the taxable year ending before the due date for the installment, over

(ii) The aggregate amount of any prior required installments for the taxable year.

(C) For purposes of this subdivision (2), the applicable percentage for the first required installment is twenty-two and one-half percent (22.5%), the applicable percentage for the second required installment is forty-five percent (45%), the applicable percentage for the third required installment is sixty-seven and one-half percent (67.5%), and the applicable percentage for the fourth required installment is ninety percent (90%).

(e) For purposes of subsection (f) of this section, the amount of the underpayment shall be the excess of the required installment, over the amount, if any, of the installment paid on or before the due date for the installment. For purposes of subsection (f) of this section, the period of the underpayment shall run from the due date for the installment to whichever of the following dates is earlier: the fifteenth day of the fourth month of the next succeeding taxable year, or, with respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subsection, a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(f) Except as otherwise provided in this section, in the case of any underpayment of estimated tax by an individual, there shall be added to the tax an amount determined by applying interest at the rate prescribed by Section 67-1-801(a) to the amount of the underpayment for the period of the underpayment.

(g) The application of this section to taxable years of less than twelve (12) months shall be in accordance with rules adopted by the commissioner.

(h) Payment of the estimated income tax, or any installment thereof, shall be considered payment on account of the income tax levied under this part for the taxable year.

(i) If an individual has paid as an installment of estimated tax an amount in excess of the amount determined to be the correct amount of such installment, such amount shall be credited against any unpaid installment or against the tax. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, then, unless the individual has given written notice to the commissioner that such overpayment is to be refunded, such overpayment shall be credited against any installment of estimated tax due for the next succeeding taxable year.

(j)(1) If the tax, reduced by the tax withheld under this part, shown on the return or otherwise, is five hundred dollars (\$500) or less, no addition to tax shall be levied under subsection (f) of this section.

(2) No addition to tax shall be levied under subsection (f) of this section for any taxable year if:

(A) The preceding taxable year was a taxable year of twelve (12) months; and

(B) The individual did not have any liability for tax for the preceding taxable year and throughout such year the individual was:

(i) A resident individual; or

(ii) A nonresident individual or part-year resident individual with income, gain, loss or deduction derived from or connected with sources within this state.

(k) For purposes of applying this section, the tax withheld under this part shall be deemed a payment of estimated tax, and an equal part of such tax withheld shall be deemed paid on each due date for such taxable year, unless the taxpayer establishes the dates on which such tax was actually withheld, in which case the tax so withheld shall be deemed payments of estimated tax on the dates on which such tax was actually withheld.

(l) If, on or before January 31 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, then no addition to tax shall be levied under subsection (f) of this section with respect to any underpayment of the fourth required installment for the taxable year.

(m) For purposes of this section, if an individual is a farmer or fisherman for any taxable year, the following provisions shall apply:

(1) There shall be only one (1) required installment for the taxable year;

(2) the due date for such installment shall be January 15 of the following taxable year;

(3) the amount of such installment shall be equal to the lesser of:

(A) Sixty-six and two-thirds percent (66.67%) of the tax shown on the return for the taxable year, or, if no return is filed, sixty-six and two-thirds percent (66.67%) of the tax for such year; or

(B) If the preceding taxable year was a taxable year of twelve (12) months and the individual filed a return for the preceding taxable year, one hundred percent (100%) of the tax shown on the return for the preceding taxable year;

(4) If, on or before March 1 of the following taxable year, the farmer or fisherman files a return and pays in full the amount computed on the return as payable, no addition to tax shall be levied under subsection (f) of this section with respect to any underpayment of the required installment, as provided in subdivision (3) of this subsection, for the taxable year; and

(5) An individual is a farmer or fisherman for any taxable year if such individual is a farmer or fisherman, as defined in Section 6654(i)(2) of the Internal Revenue Code, for the taxable year.

(n)(1) Except as otherwise provided in this subsection, this section shall apply to any trust or estate.

(2) With respect to any taxable year ending before the date two (2) years after the date of the decedent's death, this section shall not apply to:

(A) The estate of such decedent, or

(B) Any trust:

(i) All of which was treated under Sections 671 to 679, inclusive, of the Internal Revenue Code as owned by the decedent, and

(ii) To which the residue of the decedent's estate will pass under the will or, if no will is admitted to probate, which is the trust primarily responsible for paying debts, taxes, and expenses of administration.

(3) In the case of any trust or estate to which this section applies, for any required installment, the annualized income installment is the excess, if any, of:

(A) An amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the Tennessee adjusted gross income and the adjusted federal alternative minimum taxable income for months in the taxable year ending before the date one month before the due date for the installment, over

(B) The aggregate amount of any prior required installments for the taxable year.

(o) "Required annual payment" means the lesser of:

(1) Ninety percent (90%) of the tax shown on the return for the taxable year, or if no return is filed, ninety percent (90%) of the tax for such year; or

(2) If the preceding taxable year was a taxable year of twelve (12) months and the taxpayer filed a return for the preceding taxable year, one hundred percent (100%) of the tax shown on the return of the taxpayer for such preceding taxable year.

67-2-219.

(a) An extension of time of four (4) months in which to file any return, statement or other document due or required under this part will be granted, provided that on or before the original due date of the return, the taxpayer makes the request and pays taxes equal to one hundred percent (100%) of the liability for the tax year for which the extension is being requested, and the extension request is made on a form prescribed by the department. The commissioner may require the filing of a tentative return and the payment of the tax reported to be due thereon in connection with any extension. Any additional tax which may be found to be due on the filing of a return, statement or other document as allowed by such extension shall bear interest at the rate prescribed by Section 67-1-801(a) from the original due date of such tax to the date of actual payment. Notwithstanding the provisions of Section 67-2-220, no penalty shall be imposed on account of any failure to pay the amount of tax reported to be due on a return, statement or other document within the time specified under the provisions of this part if the excess of the amount of tax shown on the return, statement or other document over the amount of tax paid on or before the original due date of such return, statement or other document is no greater than ten percent (10%) of the amount of tax shown on such return, statement or other document, and any balance due shown on such return, statement or other document is paid on or before the extended due date of such return, statement or other document.

(b) The commissioner may, in the commissioner's sole discretion, grant an additional extension of time of no more than two (2) months in which to file the return required by this part, on good and reasonable cause shown by the taxpayer before the due date of the return as extended under the provisions of subsection (a) of this section; provided, that if the taxpayer shows, within the time prescribed by this subsection, and on such form as may be prescribed by the commissioner, that the Internal Revenue Service has granted the taxpayer an extension of time to file the taxpayer's federal income tax return for the same taxable year, then the commissioner shall grant the taxpayer an extension of like amount to file the Tennessee tax return.

67-2-220.

(a) If any taxpayer fails to pay the amount of tax reported to be due on the taxpayer's return within the time specified under the provisions of this part, there shall be imposed a penalty equal to ten percent (10%) of such amount due and unpaid. Such amount shall also bear interest at the rate prescribed by Section 67-1-801(a) from the due date of such tax until the date of payment.

(b) The commissioner may waive all or part of the penalties provided under this part, subject to the provisions of Section 67-1-803.

(c) In case of each failure to file a statement of payment to another person required under the authority of this part, including the duplicate statement of tax withheld on wages on the date prescribed therefor, determined with regard to any extension of time for filing, there shall be paid, upon notice and demand by the commissioner, by the person so failing to file the statement, a penalty of five dollars (\$5.00) for each statement not so filed, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed two thousand dollars (\$2,000). The commissioner may waive this penalty subject to the provisions of Section 67-1-803.

67-2-221.

(a) Each employer, maintaining an office or transacting business within this state and making payment to a resident or nonresident individual of any wages by which the tax levied under this part is measured, shall deduct and withhold from such wages for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee under this part with respect to the amount of such wages during the calendar year. The method of determining the amount to be withheld shall be prescribed by rules promulgated by the commissioner.

(b) The commissioner may by rule require persons other than employers:

(1) To deduct and withhold taxes from payments made by such persons to residents of this state, nonresidents and part-year residents;

(2) To file a withholding return as prescribed by the commissioner; and

(3) To pay over to the commissioner, or to a depository designated by the commissioner, the taxes so required to be deducted and withheld, in accordance with a schedule established in such rules.

(c) The commissioner may adopt rules providing for withholding from:

(1) Remuneration for services performed by an employee for the employer that do not constitute wages;

(2) Wages paid to an employee by an employer not maintaining an office or transacting business within this state; or

(3) Any other type of payment with respect to which the commissioner finds that withholding would be appropriate under the provisions of this part if the employer and the employee, or, in the case of any other type of payment, the person making and the person receiving such payment, agree to such withholding. Such agreement shall be made in such form and manner as the commissioner may, by rule, prescribe. For purposes of this part remuneration, wages or other payments with respect to which such an agreement is made shall be regarded as if they were wages paid to an employee by an employer maintaining an office or transacting business within this state to the extent that such remuneration or wages are paid or other payments are made during the period for which the agreement is in effect.

(d) Where any person who is not an employer is required by rule to withhold wages or other payments, the provisions of this section apply to such person as if the person were an employer and as if all amounts withheld were wages.

(e) Every employer, irrespective of whether or not such employer deducted and withheld the amounts as provided in this section, shall be liable for the amounts required to be deducted and withheld. If the employer, in violation of the provisions of this section, fails to deduct and withhold the amounts so provided and thereafter the tax, against which such amounts would have been credited, is paid, the amounts so required by this section to be deducted and withheld shall not be collected from the employer; but in no such case shall the employer be relieved from liability for any penalties, interest or additions to the amounts required under this section to be deducted and withheld otherwise applicable to any such failure to deduct and withhold.

(f) Every employer subject to the provisions of this section shall file a return, in such form as shall be determined by the commissioner, and remit the amount withheld at the same times the employer is required under federal law and regulations to pay over federal taxes required to be deducted and withheld. Failure to remit timely the amount withheld shall subject the employer to those penalties and interest described in Section 67-1-801.

(g) Every employer who deducts and withholds any amounts under the provisions of this section shall hold the same in trust for the state of Tennessee for the payment thereof to the commissioner in the manner and at the time provided in this section. To secure the payment of any amounts withheld and not remitted as required by this section, the state shall have a lien upon all interests in property, either real or personal, tangible or intangible, owned or subsequently acquired by the employer, so long as any delinquency continues. The lien of the state shall be entitled to priority over any other lien of any kind whatsoever with regard to such trust fund taxes whether or not notice of the lien has been filed.

(h) All amounts deducted, withheld and remitted shall be considered as tax collected under the provisions of this section and no employee shall have any right of action against an employer in respect to any monies so deducted and withheld from wages and paid over to the commissioner in compliance or intended compliance with this section.

(i) Every employer required to deduct and withhold tax under this part from the wages of an employee shall furnish to each such employee in respect to the wages paid by such employer to such employee during the calendar year, on or before January 31 of the next succeeding year, a written statement as prescribed by the commissioner showing the amount of wages paid by the employer to the employee, the amount deducted and withheld as tax, and such other information as the commissioner shall prescribe.

(j) Every employer shall also file an annual statement with the commissioner summarizing the total compensation paid and the tax withheld for such employee during the preceding calendar year or any portion thereof, and providing such other information required by the commissioner. The statement shall be filed on or before March 1 of the year following that for which the report is made and shall be on such forms as prescribed by the commissioner.

(k) Failure to file the statements required by subsection (j) of this section within the time prescribed therefor shall subject the employer to a penalty of five hundred dollars (\$500) for each such failure, which shall be in addition to any criminal penalty otherwise provided for failure to file a return or for filing a false or fraudulent return. The commissioner may waive this penalty subject to the provisions of Section 67-1-803.

(l) No later than thirty (30) days after becoming subject to the withholding provisions of this section, every employer shall register with the department by completing and filing a registration information form prescribed by the commissioner. Whenever an employer ceases doing business, or for any other reason is no longer subject to the withholding provisions of this section, it shall so notify the commissioner within fifteen (15) days thereof. Any employer who fails timely to register or notify the commissioner shall be subject to a penalty of one thousand dollars (\$1,000). The commissioner may waive this penalty subject to the provisions of Section 67-1-803.

(m)(1) Liability for taxes or withholding under this part may be challenged only upon compliance with the provisions of Section 67-1-1801 or Section 67-1-1802, except as provided in Section 67-2-233(a); provided, that a person withholding taxes under this part shall be considered a taxpayer under Section 67-1-1801 et seq.

(2) No court shall enjoin payment, withholding or collection of the tax levied under this part, and no court shall enjoin or in any manner impede reporting, administration, or enforcement under this part, except that collection or withholding from a plaintiff in a suit instituted in compliance with Section 67-1-1801 shall be stayed upon that plaintiff's compliance with the provisions for stay set out in that section.

(n) The commissioner may establish by rule periodic filing and payment dates in those instances where the commissioner deems it to be in the best interests of the state to do so.

(o) Wages upon which tax is required to be withheld shall be taxable under this part as if no withholding were required, but any amount of tax actually deducted and withheld in any calendar year shall be deemed to have been paid to the commissioner on behalf of the person from whom withheld, and such person shall be credited with having paid that amount of tax for the taxable year beginning in such calendar year.

(p) The commissioner may adopt rules requiring returns of information to be made and filed on or before April 15 of each year by any person making payment or crediting in any calendar year amounts of one hundred dollars (\$100) or more, or ten dollars (\$10) or more in the case of interest or dividends, to any person who may be subject to the tax levied under this part. Such returns may be required of any person, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this state, or of any municipal corporation or political subdivision of this state, having the control, receipt, custody, disposal or payment of dividends, interest, rents, salaries, wages, premiums, annuities, compensations, remuneration, pensions, gambling winnings, emoluments or other fixed or determinable gains, profits, or income, except interest coupons payable to bearer. The commissioner may also require that persons making the returns under this subsection furnish to their payees, on or before January 31 of the next succeeding year, a written statement as prescribed by the commissioner showing the amount of payment which has been reported to the commissioner in respect of such payee.

(q) This section shall be effective for payroll periods ending on or after January 1, 2003, but only to the extent that income is earned on or after such date, the public welfare requiring it. Notwithstanding the foregoing sentence, subsection (m) of this section shall take effect upon becoming law, the public welfare requiring it.

67-2-222. Employers shall also be subject to the provisions of Section 67-1-703 relative to payment in immediately available funds and electronic filings. Notwithstanding the provisions of Section 67-1-703 to the contrary, an employer who is required by federal law to file its return electronically or to make payment of withheld taxes in immediately available funds, shall file and pay its Tennessee return and liability in like manner.

67-2-223.

(a) If the amount of any taxpayer's adjusted gross income or taxable income reported on the taxpayer's federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States, resulting in a change in the amount of tax due under this part, the taxpayer shall pay any additional tax due, plus interest, and file an amended return under this part, or such other form as the commissioner shall prescribe, reporting such change or correction, within ninety (90) days after the final determination of such change, correction, or renegotiation, and shall concede the accuracy of such determination or state wherein it is erroneous.

(b) Any taxpayer filing an amended federal income tax return shall also file within ninety (90) days thereafter an amended return under this part and pay any additional tax due, plus interest, pursuant to Section 67-1-801.

(c) In the case of a redetermination of adjusted gross income by the Internal Revenue Service resulting in a taxpayer owing additional taxes levied by this part, the statutory period for the assessment of additional taxes resulting from such redetermination shall not expire prior to two (2) years from the date the commissioner or the commissioner's delegate is notified in writing by the taxpayer of such revision. In the event that such redetermination results in a refund of the taxes levied by this part, the commissioner is authorized to make such refund provided the taxpayer makes a refund claim, or the commissioner is in possession of the proper proof of the refund, within one (1) year from the date of such determination by the Internal Revenue Service.

67-2-224.

(a) The commissioner is authorized to enter into an agreement with the secretary of the treasury of the United States or the secretary's designee, under which the secretary or the designee will assist in the overall administration of the tax levied by this part. The cost of the services performed by the secretary or the designee in such activities under the terms of any agreement may be paid from the appropriations for the general operations of the department of revenue.

(b) The commissioner is authorized to enter into an agreement with the secretary of the treasury of the United States or the secretary's designee, under which the commissioner will assist in the overall administration of tax administration functions in respect to the federal income tax. Such agreement shall make provision for the payment by the United States of costs of the services performed on its behalf.

(c) The commissioner may enter into agreements with the secretary of the treasury of the United States to provide for the compliance with this part of each department or agency of the United States in withholding of state income taxes from the wages of federal employees and paying the same to this state.

(d) The commissioner may enter into agreements with the tax officers of other states, which require a tax on or measured by income to be withheld from the payment of wages and salaries, so as to govern the amounts to be withheld from the wages and salaries of residents of such states under this part. Such agreements may provide for recognition of anticipated tax credits in determining the amounts to be withheld and, under rules prescribed by the commissioner, may relieve employers in this state from withholding income tax on wages and salaries paid to nonresident employees. The agreements authorized by this subsection are subject to the condition that the tax officers of such other states grant similar treatment to residents of this state.

67-2-225.

(a) Any return, declaration, statement or other document required to be made pursuant to this part shall be signed if required by, and then in accordance with, rules adopted or instructions prescribed by the commissioner. The fact that an individual's name is signed to a return, declaration, statement or other document shall be prima facie evidence for all purposes that the return, declaration, statement or other document was actually signed by such individual.

(b) Any return, statement or other document required of a partnership shall be signed by one or more partners if required by and then in accordance with rules adopted or instructions prescribed by the commissioner. The fact that a partner's name is signed to a return, statement or other document shall be prima facie evidence for all purposes that such partner is authorized to sign on behalf of the partnership.

(c) Any return, statement or other document required of an S corporation shall be signed by one (1) or more officers if required by and then in accordance with rules adopted or instructions prescribed by the commissioner. The fact that an officer's name is signed to a return, statement or other document shall be prima facie evidence for all purposes that such officer is authorized to sign on behalf of the S corporation.

(d) The making or filing of any return, declaration, statement or other document or copy thereof required to be made or filed pursuant to this part, including a copy of a federal income tax return, shall constitute a certification by the person making or filing such return, declaration, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

67-2-226. Any person, required to collect or withhold, truthfully account for and pay over the tax levied under this part, who willfully fails to collect or withhold such tax or truthfully account for and pay over such tax, shall be liable for the total amount of the tax evaded, or not accounted for and paid over, plus interest thereon, and a penalty equal in amount to the total tax evaded, or not collected, or not accounted for and paid over.

67-2-227. A nonresident who withholds taxes in compliance with this part shall not be found to be doing business in this state solely by reason of such withholding.

67-2-228. No tax levied on any taxpayer by the provisions of this part shall be reduced, modified, obligated or expended as an incentive for any person to conduct, locate or expand any business in this state. Nothing in this section shall prohibit the general assembly from appropriating any funds for this purpose.

67-2-229. Any husband and wife who elect to file a joint return under the federal income tax for any taxable year shall be required to file jointly with respect to such taxable year for purposes of this part, in which event their tax liability shall be joint and several, except as otherwise provided in Section 67-2-230, and any husband and wife, who elect to file separately under the federal income tax for any taxable year, shall be required to file separately with respect to such taxable year for purposes of this part; provided:

(1) If either the husband or wife is a resident and the other is a nonresident, separate taxes shall be determined on their separate Tennessee adjusted gross incomes on separate forms as married individuals filing separately unless such husband and wife determine their federal taxable income jointly and both elect to determine their joint Tennessee adjusted gross income as if both were residents; or

(2) If any husband and wife, both of whom are nonresidents, elect to file a joint return under the federal income tax for any taxable year, and only one (1) of them has income derived from or connected with sources within this state during such taxable year, only the spouse with income derived from or connected with sources within this state shall be required to file a return in this state; and if only the spouse with income derived from or connected with this state files such a return in this state, a separate tax shall be determined on such spouse's separate Tennessee adjusted gross income as a married individual filing separately, unless such husband and wife both elect to determine their joint Tennessee adjusted gross income as if both had income derived from or connected with sources within this state.

67-2-230.

(a) Any individual who has made a joint return under this part may elect to seek relief under the provisions of subsection (b) of this section and if such individual is eligible to elect the application of subsection (c) of this section, such individual may in addition to any election under subsection (b) of this section, elect to limit such individual's liability for any deficiency with respect to such joint return in the manner prescribed under subsection (c) of this section.

(b)(1) Under procedures prescribed by Section 67-1-1801 for taxpayer conferences, if:

(A) A joint return has been made for a taxable year and on such return there is an understatement of tax attributable to erroneous items of one individual filing the joint return;

(B) The other individual filing the joint return establishes that in signing the return such other individual did not know, and had no reason to know, that there was such an understatement;

(C) Taking into account all the facts and circumstances, it is inequitable to hold such other individual liable for the deficiency in tax for such taxable year attributable to such understatement or portion of such understatement, as the case may be; and

(D) Such other individual elects the application of this subsection, in such form as the commissioner may prescribe, not later than the date which is two (2) years after the date the commissioner has begun collection activities with respect to the individual making the election; then such other individual shall be relieved of liability for tax, including interest, penalties and other amounts due for such taxable year to the extent such liability is attributable to such understatement.

(2) If the electing individual satisfies the conditions of subdivision (1) of this subsection except subdivision (1)(B), and establishes that in signing the return such individual did not know, and had no reason to know, the extent of such understatement, such individual shall be relieved of liability for tax, including interest, penalties and other amounts due for such taxable year to the extent such liability is attributable to the portion of such understatement of which such individual did not know and had no reason to know.

(c)(1) If an individual who has made a joint return for any taxable year elects the application of this subsection, the individual's liability for any deficiency that is assessed with respect to the return shall not exceed the portion of such deficiency properly allocable to such individual under subsection (d) of this section.

(2) The electing individual shall have the burden of proof with respect to establishing the portion of any deficiency allocable to such individual.

(3) An individual shall be eligible to elect the application of this subsection if:

(A) At the time such election is filed, such individual is no longer married to, or is legally separated from, the individual with whom such individual filed the joint return to which the election relates; or

(B) Such individual was not a member of the same household as the individual with whom such joint return was filed at any time during the twelve (12) month period ending on the date such election is filed.

(4) If assets were transferred between individuals filing a joint return as part of a fraudulent scheme by such individuals, an election under this subsection by either individual shall be invalid.

(5) If the individual electing under this subsection had actual knowledge, at the time such individual signed the return, of any item giving rise to a deficiency or portion thereof which is not allocable to such individual under subsection (d) of this section, the election shall not apply to such deficiency or portion thereof, unless the individual with actual knowledge establishes that the electing individual signed the return under duress.

(6) The portion of the deficiency for which the individual electing under this subsection is liable shall be increased by the value of any disqualified asset transferred to the individual. For purposes of this section, "disqualified asset" means any property or right to property transferred to an electing individual with respect to a joint return by the other individual filing such joint return if the principal purpose of the transfer was the avoidance of tax or payment of tax. Any transfer which is made after the date that is one (1) year before the date on which a notice of proposed deficiency assessment is sent, other than any transfer pursuant to a decree of divorce or separate maintenance or a written instrument incident to such a decree or to any transfer which an individual establishes did not have as its principal purpose the avoidance of tax or payment of tax, shall be presumed to have as its principal purpose the avoidance of tax or payment of tax.

(d)(1) The portion of any deficiency on a joint return allocated to an individual electing under subsection (c) of this section shall be the amount that bears the same ratio to such deficiency as the net amount of items taken into account in computing the deficiency and allocable to the individual under this subdivision bears to the net amount of all items taken into account in computing the deficiency.

(2) If a deficiency or portion thereof is attributable to the disallowance of a credit, and such item is allocated to one (1) individual under subdivision (3) of this subsection, such deficiency or portion thereof shall be allocated to such individual. Any such item shall not be taken into account under subdivision (1) of this subsection.

(3) Except as provided in subdivisions (4) and (5) of this subsection, any item giving rise to a deficiency on a joint return shall be allocated to individuals filing the return in the same manner as it would have been allocated if the individuals had filed separate returns for the taxable year. If the allocation of any item is appropriate due to fraud of one (1) or both individuals, the commissioner may provide for such allocation in a manner as prescribed in rules adopted in accordance with Title 67, Chapter 1.

(4) If a credit under Section 67-2-214 would be disallowed in its entirety solely because a separate return is filed, such disallowance shall be disregarded and the item shall be computed as if a joint return had been filed and then allocated between the joint filers appropriately.

(5) If the liability of a child of a taxpayer is included on a joint return, such liability shall be disregarded in computing the separate liability of either joint filer and such liability shall be allocated appropriately between the joint filers.

(e) The commissioner shall conduct an informal conference, determine what relief, if any, is available to an electing individual under this section, issue a conference decision, and give the individual written notification of the decision in the manner prescribed for informal conferences pursuant to Section 67-1-1801.

(f) The commissioner shall, by mail at the last known address, notify the non-electing individual filing the joint return of the election and offer that individual an opportunity to participate in any informal conference.

67-2-231. The commissioner may provide that nonresident persons whose income derived from or connected with sources in this state is de minimis, are exempt from the tax levied by this part.

67-2-232. The taxes collected under this part shall be earmarked for and allocated to the general fund.

67-2-233.

(a) Notwithstanding any provision of this act to the contrary, no later than thirty (30) days after the date on which this act becomes law, each employer maintaining an office or transacting business within this state and making payment of any wages to a resident or nonresident individual, shall register with the department by completing and filing a registration information form prescribed by the commissioner. Any such employer required to register may bring an action for declaratory judgment concerning the constitutionality or validity of the tax levied in this part, which action shall only be brought in the Chancery Court of Davidson County. Such action must be brought prior to January 1, 2003. Appeal from such action shall be taken directly to the supreme court. It is the legislative intent that any such action be handled in an expedited manner by the chancery court and that any appeal from such action be handled in an expedited manner by the supreme court in light of the paramount public interest in stability and certainty in the state's revenue system.

(b) Notwithstanding any provision of this part to the contrary, for any taxable year ending on or before December 31, 2003, "required annual payment," for purposes of Section 67-2-218, means seventy percent (70%) of the tax shown on the return for the taxable year, or if no return is filed, seventy percent (70%) of the tax for such year.

(c) Notwithstanding any provision of this title to the contrary, the commissioner may waive all or part of any penalty imposed under this part and arising out of a taxable period ending on or before December 31, 2003, upon written request of the taxpayer, if the commissioner determines, in the commissioner's sole discretion, that the taxpayer has shown good and reasonable cause for the failure; provided that no penalty shall be waived if the failure is the result of gross negligence or willful disregard of the law.

(d) This section shall take effect upon becoming a law, the public welfare requiring it.

67-2-234. Notwithstanding any provision of law to the contrary, except as provided in Section 67-2-223(c) an income tax refund shall not be made unless:

(1) the refund claim is filed within one (1) year from December 31 of the year in which payment was made, or

(2) if no refund claim has been filed but the commissioner is in possession of proper proof and facts that a refund is due, the commissioner makes the refund within one (1) year from December 31 of the year in which payment was made.

67-2-235. A taxpayer shall receive a credit against the tax levied by this part in the amount of any tax paid pursuant to Title 67, Chapter 4, Part 17.

67-2-236.

(a) Notwithstanding any other provision of law to the contrary, a taxpayer that receives a valid Tax Credit Certificate from:

(1) Any subchapter S corporation;

(2) Any limited liability company, professional limited liability company, limited partnership, registered limited liability partnership, professional registered limited liability partnership, or other entity that is treated as a partnership for federal income tax purposes, or

(3) Any limited liability business entity (except for qualified subchapter S subsidiaries with an election in effect under Section 1361(b)(3)(B)(ii) of the Internal Revenue Code and qualified real estate investment trust subsidiaries described in Section 856(i) of such Code) which is disregarded as an entity separate from its owner for federal income tax purposes and which has as its single owner a person subject to the tax under this part or a not-for-profit entity, may take a credit against the Tennessee income tax levied by this part for the lesser of: (1) the amount of excise tax paid, as shown on the Tax Credit Certificate form, that is attributable to the passed-through net income; or (2) the amount of excise tax paid, as shown on the Tax Credit Certificate form, that is attributable to the passed-through net income, times a fraction, the numerator of which shall be the applicable income tax rate and the denominator of which shall be the applicable excise tax rate.

(b) A taxpayer may take the credit provided in this section only if copy A of the Tax Credit Certificate is attached to its Tennessee income tax return.

SECTION 12. Tennessee Code Annotated, Title 67, Chapter 4, Part 20, is amended by adding the following new section:

67-4-20__.

(a) Notwithstanding any other provision of law to the contrary,

(1) Any subchapter S corporation;

(2) Any limited liability company, professional limited liability company, limited partnership, registered limited liability partnership, professional registered limited liability partnership, or other entity that is treated as a partnership for federal income tax purposes, or

(3) Any limited liability business entity (except for qualified subchapter S subsidiaries with an election in effect under Section 1361(b)(3)(B)(ii) of the Internal Revenue Code and qualified real estate investment trust subsidiaries described in Section 856(i) of such Code) which is disregarded as an entity separate from its owner for federal income tax purposes and which has as its single owner a person subject to the tax under this part or a not-for-profit entity, that pays excise tax to this state and, for federal income tax purposes, passes its net income, or a portion thereof, through to a Tennessee member, partner or shareholder subject to the Tennessee income tax shall complete in quadruplicate, designated copies A, B, C, and D, a Department of Revenue Tax Credit Certificate form for each Tennessee member, partner, or shareholder. The form shall show the amount of excise tax paid that is attributable to the net income passed through to the Tennessee member, partner or shareholder and such other information as the commissioner may require.

(b) A business entity completing the Tax Credit Certificate form required by subsection (a) shall, at the same time it provides the Internal Revenue Service with information concerning the amount of net income passed through to such member, partner or shareholder for federal income tax purposes, retain Copy D of the form, mail Copies A and B to the Tennessee member, partner or shareholder to which it applies and mail Copy C of the form to the department of revenue.

(c) Under the following circumstances, the following penalties shall be assessed by the commissioner based on the amount passed through, or that should have been passed through, to each Tennessee member, partner or shareholder for federal income tax purposes:

(1) Failure to timely complete and mail the appropriate copies of the Tax Credit Certificate at the same time that the Internal Revenue Service is provided with information concerning the amount of net income passed through to each Tennessee member, partner or shareholder shall result in a penalty assessment of five percent (5%) for each thirty (30) days or fraction thereof that the copies of the Tax Credit Certificate are not completed and mailed as required, up to a maximum of twenty-five percent (25%).

(2) Failure to comply with this section due to negligence, whether ordinary or gross, as determined by the commissioner, shall result in a penalty assessment of ten percent (10%).

(3) Commission of fraud, as determined by the commissioner, in complying, or failing to comply, with this section shall result in a penalty assessment of one hundred percent (100%).

(d) Fraud penalties assessed under subdivision (c)(3) shall not be subject to waiver. Negligence and delinquency penalties assessed under subdivision (c)(1) or (c)(2) may be waived by the commissioner in whole or in part if the business entity has not incurred a like penalty, or has not had a like penalty waived, within its last three (3) tax years and the commissioner determines that the business entity has done everything that it could reasonably be expected to do as a business operated by reasonably intelligent and prudent management and there is no evidence of willful disregard of the law or gross negligence.

(e) There shall be no judicial review of the commissioner's action upon applications for waiver of penalty as authorized in subsection (d). All penalty waivers pursuant to this section shall be at the sole discretion of the commissioner and the commissioner's decision in that regard shall be final.

SECTION 13. Tennessee Code Annotated, Title 9, Chapter 4, Part 52, is amended by adding the following new sections:

9-4-5204. Notwithstanding any law to the contrary, in no fiscal year shall appropriations for general expenditures from state tax revenues received in such year exceed six percent (6%) of the state's economy. For purposes of this section, "general expenditures" shall mean appropriations of amounts collected from state taxes identified pursuant to Section 9-4-5202(b), to the debt service fund, the capital projects fund, the highway fund, the education trust fund and the general fund. For purposes of this section, the "state's economy" shall be measured by personal income as provided in Section 9-4-5201(b).

9-4-5205. If state tax revenues collected in any fiscal year exceed the amount of such revenues that can be appropriated under the limit imposed in this chapter, such excess amount shall be rebated to taxpayers as provided in this section. To the extent practical, rebates shall be made to taxpayers on a pro rata basis in relation to taxes paid under the provisions of Section 67-2-204 in the tax year for which such excess collections were received. The commissioner of revenue shall determine the estimated aggregate cost of processing such tax rebate payments to taxpayers. To the extent excess tax revenues exceed the processing cost for rebates, the net amount shall be the aggregate amount of rebates to be made. If the aggregate cost of processing rebates is estimated to exceed the excess tax collections, then such excess tax collections shall be placed into the reserve for revenue fluctuations established in Section 9-4-211.

SECTION 14.

(a) If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

(b) If the tax levied pursuant to Section 11 of this act is held unconstitutional by final action of the supreme court or final judgment of the chancery court if such judgment is not appealed to the supreme court and has become a final judgment, then the following shall apply:

(1) Tennessee Code Annotated, Section 67-6-202(a), is amended by deleting the language "six percent (6%)", and by substituting instead the language "seven and one-half percent (7.5%)".

Tennessee Code Annotated, Section 67-6-203(a), is amended by deleting the language "six percent (6%)", and by substituting instead the language "the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202".

Tennessee Code Annotated, Section 67-6-204, is amended by deleting the language "six percent (6%)" wherever it appears in subsections (a) and (c), and by substituting instead the language "the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202".

Tennessee Code Annotated, Section 67-6-205(a), is amended by deleting the language "six percent (6%)", and by substituting instead the language "the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202".

Tennessee Code Annotated, Section 67-6-103, is amended by adding the following new subsection:

() Notwithstanding the provisions of this section to the contrary, all revenue generated from the increase in the rate of the state sales and use tax pursuant to the provisions of the Tax Reform Act of 2002 shall be deposited in the state general fund and no funds generated from such rate increase shall be distributed pursuant to the provisions of (a) through (e) of this section. Sections 2, 3, 4, 5, 7, 8, 9, and 10 of this act are repealed.

(2) The provisions of subdivision (1) of subsection (b) of this section shall take effect on the first day of the first month occurring sixty (60) days after the effective date of the court's order, or January 1, 2003, whichever is later.

(3) Notwithstanding any provision of this section to the contrary, on July 1, 2003, the public welfare requiring it, the provisions of subdivision (b)(1) of this section which increase the rate of the state sales and use tax are repealed.

(4) Notwithstanding the provisions of Section 9-4-5501 or any other law to the contrary, any refunds required if the tax imposed by Title 67, Chapter 2, Part 2, is held invalid shall first be paid from funds received pursuant to the tobacco master settlement agreement.

(5) All of Tennessee Code Annotated, Title 67, Chapter 2, Part 1, as it existed immediately before this act became law, shall be revived in its entirety effective January 1 of the year of the effective date of the court's order. If Tennessee Code Annotated, Title 67, Chapter 2, Part 1 is revived, the Tennessee Code Commission is directed to restore such code sections appropriately.

SECTION 15. The commissioner is authorized to promulgate rules in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5, to implement and administer the provisions of this act. This authority should be interpreted broadly to enable the commissioner to give effect to the legislative intent. Such rules, to the extent deemed necessary by the commissioner for timely implementation of this act, shall include public necessity and emergency rules.

SECTION 16. Tennessee Code Annotated, Section 67-4-1004(a), is amended by deleting the language "six and one-half (6 ½) mills" and by substituting instead the language "ten (10) mills".

Tennessee Code Annotated, Section 67-4-1004, is further amended by adding the following new subsections:

(c) Notwithstanding any provision of law to the contrary, any increase in revenue generated under Title 67, Chapter 6, Part 2 and Part 7, or any other state or local tax, resulting, directly or indirectly, from the increase in the tax levied in subsection (a) from six and one-half (6 ½) mills to ten (10) mills shall be deposited in the general fund and shall not be distributed to county or municipal governments.

(d) Any wholesale dealers, jobbers, tobacco distributors, and retail dealers having cigarette tax stamps, affixed and unaffixed, in their possession on July 1, 2002, shall not be required to pay the additional cigarette tax on such stamps resulting from the increase in tax rate from six and one-half (6 ½) mills to ten (10) mills.

(e) Notwithstanding the provisions of subsection (c), any provision of this act or any other law to the contrary, in the fiscal years beginning July 1, 2003, July 1, 2004, July 1, 2005, and July 1, 2006, the additional revenue from the increase in the tax levied in subsection (a) from six and one-half (6 ½) mills to ten (10) mills shall be earmarked and allocated as follows:

(1) Fifty percent (50%) to the agricultural reserve account created in Section 9-4-5501(b), subject to the limitations of Section 9-4-5501(b); provided, that such allocation shall not exceed fifteen million dollars (\$15,000,000) in any year; and

(2) Fifty percent (50%) to the health reserve account created in Section 9-4-5501(b), subject to the limitations of Section 9-4-5501(b); provided, that such allocation shall not exceed fifteen million dollars (\$15,000,000) in any year.

The provisions of this subsection shall be repealed on June 30, 2007. Beginning July 1, 2007, all revenue generated by the increase in the tax levied in subsection (a) from six and one-half (6 ½) mills to ten (10) mills shall be allocated as provided in subsection (c).

SECTION 17. Tennessee Code Annotated, Section 67-4-1005, is amended by deleting that section in its entirety and by substituting instead the following language:

67-4-1005.

(a) The rate on all other tobacco products, including, but not limited to, cigars, cheroots, stogies, manufactured tobacco and snuff of all descriptions whether made of tobacco or any substitute therefor, shall be six and six-tenths percent (6.6%) of the wholesale cost price.

(b) Notwithstanding any provision of law to the contrary, any increase in revenue generated under Title 67, Chapter 6, Part 2 and Part 7, or any other state or local tax, resulting, directly or indirectly, from the increase in the tax levied in subsection (a) from six percent (6%) to six and six-tenths percent (6.6%) shall be deposited in the general fund and shall not be distributed to county or municipal governments.

SECTION 18. Tennessee Code Annotated, Section 57-3-302, is amended by deleting that section in its entirety and by substituting instead the following language:

57-3-302. (a) There is levied upon the sale or distribution by sale or gift a tax of one dollar and ten twenty-one cents (\$1.21) on each gallon of wine, and a like or proportional rate per gallon on wine sold or distributed in any other container of more or less than one (1) gallon; provided, however, that the provisions of this chapter hereof shall not apply to the sale, gift or distribution of any wine manufactured, sold, given away or distributed and used solely for sacramental purposes.

(b) There is levied upon the sale or distribution by sale or gift a tax of four dollars and forty cents (\$4.40) on each gallon of spirits, and a like or proportional rate per gallon on spirits sold or distributed in any container of more or less than one (1) gallon.

(c)(1) Notwithstanding any provision of law to the contrary, any increase in revenue generated under Title 67, Chapter 6, Part 2 and Part 7, or any other state or local tax, resulting, directly or indirectly, from the increase in the tax levied in subsection (a) from one dollar and ten cents (\$1.10) per gallon to one dollar and twenty-one cents (\$1.21) per gallon shall be deposited in the general fund and shall not be distributed to county or municipal governments.

(2) Notwithstanding any provision of law to the contrary, any increase in revenue generated under Title 67, Chapter 6, Part 2 and Part 7, or any other state or local tax, resulting, directly or indirectly, from the increase in the tax levied in subsection (b) from four dollars (\$4.00) per gallon to four dollars and forty cents (\$4.40) per gallon shall be deposited in the general fund and shall not be distributed to county or municipal governments.

SECTION 19. Tennessee Code Annotated, Section 57-5-201(a), is amended by deleting that subsection in its entirety and by substituting instead the following language:

(a)(1) Every person, firm, corporation, joint-stock company, syndicate or association in this state storing, selling, distributing, or manufacturing such beer or other beverages as are described in this chapter shall pay a special privilege tax, in addition to all other taxes, in an amount equal to four dollars and twenty-nine cents (\$4.29) per barrel of thirty-one (31) liquid gallons stored, sold, distributed by gift or sale or manufactured in this state. The tax upon barrels containing more or less than thirty-one (31) gallons shall be at a proportionate rate. Beer or other such beverage manufactured in Tennessee and thereafter exported for sale, distribution or gift, or dispensed gratuitously and consumed on the premises, shall not be included in the measure of the tax liability hereby provided for. The commissioner of revenue is authorized to promulgate rules and regulations for the purpose of securing the exemption hereby given and for the purpose of preventing such exemption from being claimed in the case of beer sold, distributed or given away in Tennessee. The burden shall be on the manufacturer claiming exemption to establish to the satisfaction of the collection officers that the beverage manufactured in Tennessee is exempt under this subsection.

(2) Notwithstanding any provision of this section or law to the contrary, any revenue generated from the increase in tax rates from three dollars and forty cents (\$3.40) to three dollars and ninety cents (\$3.90) shall be allocated to the highway fund for the purpose of funding programs for the prevention and collection of litter and trash and matters related thereto. No later than March 31 of each year, the department of transportation shall transmit to the governor, and the speakers of the house and senate a report listing the programs receiving funds generated by this subsection, the amount of funds received by each program, and the purpose for which the funds were spent.

(3) Notwithstanding any provision of this section or law to the contrary, any increase in revenue generated under Title 67, Chapter 6, Part 2 and Part 7, or any other state or local tax, resulting, directly or indirectly, from the increase in the tax levied in subdivision (1) from three dollars and ninety cents (\$3.90) to four dollars and twenty-nine cents (\$4.29) shall be deposited in the general fund and shall not be distributed to county or municipal governments.

Tennessee Code Annotated, Section 57-6-104(c)(5), is amended by inserting the language "or the state privilege tax levied in Tennessee Code Annotated, Section 57-5-201" immediately following the words "excise tax" in the first sentence.

Tennessee Code Annotated, Section 57-6-103(a), is amended by designating the existing language as subdivision (1) and by adding the following new subdivision:

(2) Notwithstanding any provision of subdivision (1) or any other law to the contrary, the seventeen percent (17%) tax levied in subdivision (1) shall not be applied, directly or indirectly, to the increase in the special privilege tax on beer from three dollars and ninety cents (\$3.90) to four dollars and twenty-nine cents (\$4.29) provided in Section 57-5-201, or to any increase in the wholesale price of beer resulting from such increase in the special privilege tax on beer.

SECTION 20. Tennessee Code Annotated, Section 67-6-202, is amended by deleting the language "six percent (6%)" in subsection (a) and by substituting instead the language "seven percent (7%)".

SECTION 21. Tennessee Code Annotated, Section 67-6-203, is amended by deleting the language "six percent (6%)" in subsection (a) and by substituting instead the language "the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202".

SECTION 22. Tennessee Code Annotated, Section 67-6-204, is amended by deleting the language "six percent (6%)" wherever it appears and substituting instead the language "the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202".

SECTION 23. Tennessee Code Annotated, Section 67-6-205, is amended by deleting the language "six percent (6%)" in subsection (a) and by substituting instead the language "the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202".

SECTION 24. Tennessee Code Annotated, Section 67-6-103, is amended by deleting the language "six percent (6%)" in subsection (f) and by substituting instead the language "the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202".

SECTION 25. Notwithstanding the provisions of Sections 20, 21, 22, and 23 of this act to the contrary, sales to or use by a contractor, subcontractor, or material vendor of tangible personal property, including rentals thereof and labor or services performed in the fabrication, manufacture, delivery, or installation of such tangible personal property when such property is sold or used solely in performance of a lump sum or unit price construction contract entered into prior to May 1, 2002, shall be subject to state tax at the rate of six percent (6%). In addition, sales to or use by a subcontractor of tangible personal property, including rentals thereof and labor or services performed in the fabrication, manufacture, delivery, or installation of such tangible personal property when such property is sold or used solely in performance of a written subcontract entered into prior to May 1, 2002, if such subcontract is made pursuant to a general contract qualifying for the reduced rate of tax as set out above, shall be subject to state tax at the rate of six percent (6%). Any vendor making such sales to any such contractor or subcontractor shall collect tax at the rate of seven percent (7%) during the time during which a seven percent (7%) rate is in effect under Sections 20, 21, 22, and 23 of this act. Any such contractor paying seven percent (7%) may then petition for a refund of any such tax paid to any of the contractor's vendors at a rate in excess of six percent (6%). For purposes of this subsection the term "lump sum or unit price construction contract" means a written contract for the construction of improvements to real property under which the amount payable to the contractor, subcontractor or material vendor is fixed without regard to the costs incurred in the performance of the contract. The provisions of this paragraph shall not be construed to increase the rate of tax imposed pursuant to the provisions of Tennessee Code Annotated, Section 67-6-206.

SECTION 26. Section 3 of this act shall take effect upon becoming law, the public welfare requiring it, and shall apply to sales made beginning January 1, 2003; provided, that the exemption provided in Section 3 of this act shall also apply during the period beginning at 12:00 a.m. on July 26, 2002, and ending at 11:59 p.m. on July 28, 2002, the public welfare requiring it.

SECTION 27.

(a) Except as otherwise provided in this act, Sections 9, 10, and 11 of this act shall take effect upon becoming law and shall apply to tax years beginning on or after January 1, 2003, the public welfare requiring it.

(b) Section 12 of this act shall take effect on January 1, 2003, and shall apply to tax years ending on or after January 1, 2003, the public welfare requiring it.

(c) Except as otherwise provided in this act, Section 2 of this act shall take effect January 1, 2003, the public welfare requiring it.

(d) Section 14 of this act shall take effect upon becoming law, the public welfare requiring it.

(e) Sections 4, 5, 6, 8, 16, 17, 18, and 19 of this act shall take effect on July 1, 2002, the public welfare requiring it.

(f) Sections 20, 21, 22, 23, and 24 of this act shall take effect on July 1, 2002, the public welfare requiring it, and shall be repealed at 11:59 p.m. on December 31, 2002, at which time the statutory sections amended by Sections 20, 21, 22, 23, and 24, respectively, shall be revived as they existed immediately prior to the date on which this act becomes law, the public welfare requiring it.

(g) All other sections of this act shall take effect upon becoming a law, the public welfare requiring it.

CHAIR TO SPEAKER

Mr. Speaker Naifeh resumed the Chair.

REGULAR CALENDAR, CONTINUED

Rep. Odom moved the previous question on Amendment No. 2, which motion prevailed.

On motion, Amendment No. 2 was adopted.

Rep. Odom moved the previous question, which motion prevailed.

Rep. Head moved that **Senate Bill No. 2646**, as amended, be passed on third and final consideration, which motion failed by the following vote:

Ayes	45
Noes	49
Present and not voting	4

Representatives voting aye were: Armstrong, Bone, Bowers, Briley, Brooks, Brown, Caldwell, Chumney, Cole (Carter), Cole (Dyer), Cooper, Curtiss, Davis (Cocke), DeBerry J, DeBerry L, Fitzhugh, Ford, Fowlkes, Givens, Head, Jones U, Kernell, Kisber, Langster, Lewis, Maddox, McDaniel, McMillan, Miller, Patton, Phelan, Rhinehart, Ridgeway, Rinks, Sands, Shaw, Tindell, Towns, Turner (Hamilton), Turner (Shelby), Walker, Westmoreland, White, Whitson, Mr. Speaker Naifeh -- 45.

Representatives voting no were: Arriola, Baird, Beavers, Bittle, Black, Boyer, Bunch, Buttry, Casada, Clem, Davidson, Davis (Washington), Dunn, Ferguson, Garrett, Godsey, Goins, Hagood, Hargett, Hargrove, Harwell, Hood, Johnson, Kent, McCord, McDonald, McKee, Montgomery, Mumpower, Newton, Odom, Overbey, Phillips, Pinion, Pleasant, Roach, Rowland, Sargent, Scroggs, Sharp, Shepard, Stanley, Todd, Turner (Davidson), Vincent, West, Windle, Winningham, Wood -- 49.

Representatives present and not voting were: Buck, Fraley, Pruitt, Tidwell -- 4.

WEDNESDAY, MAY 22, 2002 – EIGHTY-EIGHTH LEGISLATIVE DAY

Senate Bill No. 2646, having failed to receive a constitutional majority, was re-referred to the House Committee on Calendar and Rules.

COMMUNICATION

May 22, 2002

The Honorable Jimmy Naifeh
Speaker
Tennessee House of Representatives
Suite 19, Legislative Plaza
Nashville, TN 37243

Dear Speaker Naifeh:

Because of my unavoidable absence from House floor sessions, I respectfully request that the attached remarks be spread on the House Journal today.

Thank you for your assistance in this matter.

Warm regards,

/s/ Sherry Jones

REMARKS ON SENATE BILL NO. 2646

As a result of a near fatal traffic accident on April 15, 2002, I am unable to attend session today. The accident involved a seventeen-year old who ran a red light. However, I sustained several major injuries and broken bones. I was in the hospital for many weeks and am now recovering at home and am still unable to walk. I will make a full recovery. However, the doctors have told me it will take quite a bit more time.

I regret that I am not in session to vote on several crucial measures that I feel strongly about and will affect the state for many years to come. I am most disappointed at not being there to express the wishes of my constituents who overwhelmingly oppose the passage of a state income tax. I ask that this statement be spread on the House Journal to emphasize the wishes of my constituency and my desire to represent their wishes. My vote would be recorded as no on this issue.

I wish to thank each of you for your thoughts and prayers during this difficult time. I hope to be back with you soon.

Representative Sherry Jones

REGULAR CALENDAR, CONTINUED

House Bill No. 646 -- Public Funds and Financing - Requires reporting by risk management section of state treasurer's office to general assembly on risk management issues affecting state of Tennessee. Amends TCA Title 9. by *Kisber. (*SB594 by *Cooper J)

Rep. Kisber moved that House Bill No. 646 be reset for the Regular Calendar on May 29, 2002, which motion prevailed.

House Bill No. 2549 -- Flags - Requires public school students to recite pledge of allegiance daily, unless student or parent objects to student's participation on religious, philosophical, or other grounds; establishes requirements for participation and non-participation in such exercise. Amends TCA Title 49, Chapter 6. by *Davis (Washington), *Godsey, *Mumpower. (*SB2599 by *Crowe, *McNally, *Burks, *Graves, *Carter, *Trail, *Dixon, *Atchley, *Crutchfield, *Burchett)

On motion, House Bill No. 2549 was made to conform with **Senate Bill No. 2599**; the Senate Bill was substituted for the House Bill.

Rep. Davis (Washington) moved that Senate Bill No. 2599 be passed on third and final consideration.

Rep. Shaw moved that Amendment No. 1 be withdrawn, which motion prevailed.

Rep. Brown moved adoption of Education Committee Amendment No. 1 as House Amendment No. 2 as follows:

Amendment No. 2

AMEND Senate Bill No. 2599 by deleting the first sentence of subdivision (c)(1) of Section 1 of the printed bill and substituting the following:

(c)(1) Each board of education shall require the daily recitation of the pledge of allegiance in each classroom in the school system in which a flag is displayed. Each LEA is encouraged to have a flag in each classroom and patriotic, fraternal, and other organizations or individuals are encouraged to donate flags to schools to enable them to have the flag of the United States of America present in each classroom.

On motion, Education Committee Amendment No. 1 as House Amendment No. 2 was adopted.

Rep. Winningham moved adoption of Education Committee Amendment No. 2 as House Amendment No. 3 as follows:

Amendment No. 3

AMEND Senate Bill No. 2599 By adding the following as a new section to precede the effective date section:

SECTION _____. The provisions of this act shall be effective only in school districts that have adopted the provisions of this act by a majority vote of the local board of education.

On motion, Education Committee Amendment No. 2 as House Amendment No. 3 was adopted.

Rep. Davis (Washington) moved that **Senate Bill No. 2599**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes	89
Noes	4
Present and not voting	1

Representatives voting aye were: Armstrong, Arriola, Baird, Beavers, Bittle, Black, Bone, Bowers, Boyer, Briley, Buck, Bunch, Buttry, Caldwell, Casada, Chumney, Clem, Cole (Carter), Cole (Dyer), Curtiss, Davidson, Davis (Washington), Davis (Cocke), Dunn, Ferguson, Fitzhugh, Ford, Fowlkes, Fraley, Garrett, Givens, Godsey, Goins, Hagood, Hargett, Hargrove, Harwell, Head, Hood, Johnson, Jones U. Kent, Kernell, Kisber, Langster, Lewis, Maddox, McCord, McDaniel, McDonald, McKee, McMillan, Miller, Montgomery, Mumpower, Newton, Odom, Overbey, Patton, Phelan, Phillips, Pinion, Pleasant, Rhinehart, Ridgeway, Rinks, Roach, Rowland, Sands, Sargent, Scroggs, Sharp, Shepard, Stanley, Tidwell, Tindell, Todd, Towns, Turner (Davidson), Vincent, Walker, West, Westmoreland, White, Whitson, Windle, Winningham, Wood, Mr. Speaker Naifeh -- 89.

Representatives voting no were: Brooks, Pruitt, Shaw, Turner (Shelby) -- 4.

Representatives present and not voting were: Cooper -- 1.

A motion to reconsider was tabled.

House Bill No. 2651 -- Nuisances - Expands types of conduct declared to be nuisance; provides for seizure and forfeiture of any vehicle used in commission of second or subsequent offense of patronizing or promoting prostitution. Amends TCA Title 29, Chapter 3, Part 1 and Title 39, Chapter 14, Part 1. by *Turner (Hamilton). (*SB2354 by *Fowler)

Rep. Turner (Hamilton) moved that House Bill No. 2651 be passed on third and final consideration.

Rep. Buck moved adoption of Judiciary Committee Amendment No. 1 as follows:

Amendment No. 1

AMEND House Bill No. 2651 by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 29-3-101(a)(2), is amended by adding the following words and punctuation after the word and comma "assignment,"

"promotion of prostitution, patronizing"

SECTION 2. Tennessee Code Annotated, Section 29-3-101(c), is amended by adding the following words and punctuation after the word "All":

"motor vehicles,"

SECTION 3. Tennessee Code Annotated, Section 29-3-101, is amended by adding the following new subsection, after subsection (d):

(e)(1) Notwithstanding the foregoing, any vehicle used in the commission of a person's second or subsequent violation for promoting prostitution or patronizing prostitution, including violations of any statute in any other state prohibiting prostitution or patronizing prostitution, is subject to immediate seizure by a law enforcement officer and forfeiture in accordance with the procedure established in Tennessee Code Annotated, Title 39, Chapter 11, Part 7.

(e)(2) In order for the provisions of subdivision (e)(1) to be applicable to a vehicle, the violation making the vehicle subject to seizure and forfeiture must occur in Tennessee and at least one (1) of the previous violations must occur on or after July 1, 2002, and the second offense after July 1, 2002, must occur within five (5) years of the first offense occurring after July 1, 2002.

SECTION 4. This act shall take effect July 1, 2002, the public welfare requiring it.

On motion, Judiciary Committee Amendment No. 1 was adopted.

Rep. Turner (Hamilton) moved that **House Bill No. 2651**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes88
Noes.....2

Representatives voting aye were: Armstrong, Arriola, Baird, Beavers, Bittle, Black, Bone, Bowers, Boyer, Briley, Buck, Bunch, Buttry, Caldwell, Casada, Chumney, Clem, Cole (Carter), Cole (Dyer), Curtiss, Davidson, Davis (Washington), DeBerry L, Dunn, Ferguson, Fitzhugh, Ford, Fowlkes, Fraley, Garrett, Givens, Godsey, Goins, Hagood, Hargett, Hargrove, Harwell, Head, Hood, Jones U, Kent, Kisber, Langster, Lewis, Maddox, McCord, McDaniel, McDonald, McKee, McMillan, Miller, Montgomery, Mumpower, Newton, Odum, Overbey, Patton, Phelan, Phillips, Pinion, Pleasant, Pruitt, Rhinehart, Ridgeway, Rinks, Roach, Rowland, Sands, Sargent, Scroggs, Sharp, Shaw, Shepard, Stanley, Tidwell, Tindell, Todd, Turner (Hamilton), Turner (Davidson), Vincent, Walker, West, Westmoreland, White, Windle, Winningham, Wood, Mr. Speaker Naifeh -- 88.

Representatives voting no were: Brooks, Turner (Shelby) -- 2.

A motion to reconsider was tabled.

RESOLUTIONS

Pursuant to **Rule No. 17**, the following resolution(s) was/were introduced and placed on the Supplemental Consent Calendar for May 22, 2002:

House Resolution No. 314 -- Memorials, Academic Achievement - Fu'Jetta D. Green, Valedictorian, Mitchell High School. by *Cooper B.

House Resolution No. 315 -- Memorials, Academic Achievement - Gregory R. Channell, Valedictorian, Loudon High School. by *Johnson.

House Resolution No. 316 -- Memorials, Academic Achievement - Christopher William Sherman, Salutatorian, Loudon High School. by *Johnson.

House Resolution No. 317 -- Memorials, Interns - Tonetria Crossfield. by *Chumney, *Maddox, *DeBerry J.

House Resolution No. 318 -- Memorials, Interns - Dorothy Camille Harris. by *Chumney, *Maddox, *DeBerry J.

House Resolution No. 319 -- Memorials, Interns - Joshua C. Powell. by *Armstrong, *Tindell.

House Resolution No. 320 -- Memorials, Recognition - Sarah Naomi Dawson. by *Bowers.

House Resolution No. 321 -- Memorials, Academic Achievement - Leah Cortni Spellen. by *Bowers.

House Resolution No. 322 -- Memorials, Personal Occasion - Clara Hill McMillin, 80th birthday. by *Naifeh.

House Resolution No. 323 -- Memorials, Academic Achievement - David Kyle Parks, Valedictorian, Sequoyah High School. by *Johnson, *McKee.

House Resolution No. 324 -- Memorials, Academic Achievement - Lucas Boring, Salutatorian, Sequoyah High School. by *Johnson, *McKee.

House Resolution No. 325 -- Memorials, Academic Achievement - Andrea Lauren Beard, Salutatorian, Greenback High School. by *Johnson, *Overbey.

House Resolution No. 326 -- Memorials, Academic Achievement - Russell Tipton, Valedictorian, Greenback High School. by *Johnson, *Overbey.

House Resolution No. 327 -- Memorials, Interns - Joscelyn Jeanne Adkins. by *Maddox, *Chumney, *DeBerry J.

House Resolution No. 328 -- Memorials, Recognition - Jaquetta Brooks. by *Armstrong, *Tindell.

WEDNESDAY, MAY 22, 2002 – EIGHTY-EIGHTH LEGISLATIVE DAY

House Resolution No. 329 -- Memorials, Retirement - Dr. Nolan Barham. by *Hood, *Rowland, *Beavers.

House Resolution No. 330 -- Memorials, Retirement - Rachel Morton. by *Hood, *Rowland, *Beavers.

House Resolution No. 331 -- Memorials, Retirement - Gloria Field. by *Hood, *Rowland, *Beavers.

House Resolution No. 332 -- Memorials, Retirement - Carolyn Reeves. by *Hood, *Rowland, *Beavers.

House Resolution No. 333 -- Memorials, Retirement - Jerry Bishop. by *Hood, *Rowland, *Hood.

House Resolution No. 334 -- Memorials, Retirement - Dorothy Smith. by *Hood, *Rowland, *Beavers.

House Resolution No. 335 -- Memorials, Retirement - Pollyanna Jones. by *Hood, *Rowland, *Beavers.

House Resolution No. 336 -- Memorials, Retirement - Elizabeth "Betty" Hord. by *Hood, *Rowland, *Beavers.

House Resolution No. 337 -- Memorials, Retirement - Dale Patterson. by *Hood, *Rowland, *Beavers.

House Resolution No. 338 -- Memorials, Retirement - Mary Rossman. by *Hood, *Rowland, *Beavers.

House Resolution No. 339 -- Memorials, Retirement - Henry Jones. by *Hood, *Rowland, *Beavers.

House Resolution No. 340 -- Memorials, Retirement - Melvin Hatcher. by *Hood, *Rowland, *Beavers.

House Resolution No. 341 -- Memorials, Retirement - Susan Summers. by *Hood, *Rowland, *Beavers.

House Resolution No. 342 -- Memorials, Retirement - Wanda Bryant. by *Hood.

House Resolution No. 343 -- Memorials, Retirement - Barbara Denton. by *Hood, *Rowland.

House Resolution No. 344 -- Memorials, Retirement - Carolyn Maples. by *Hood, *Rowland, *Beavers.

House Resolution No. 345 -- Memorials, Retirement - Christine Faulk. by *Hood, *Rowland, *Beavers.

WEDNESDAY, MAY 22, 2002 – EIGHTY-EIGHTH LEGISLATIVE DAY

House Resolution No. 346 -- Memorials, Retirement - Esther Victory. by *Hood, *Rowland, *Beavers.

House Resolution No. 347 -- Memorials, Retirement - Penny Hooper. by *Hood, *Rowland, *Beavers.

House Resolution No. 348 -- Memorials, Retirement - David Ralston. by *Hood, *Rowland, *Beavers.

House Resolution No. 349 -- Memorials, Retirement - Ed Shirley. by *Hood, *Rowland, *Beavers.

House Resolution No. 350 -- Memorials, Retirement - Rosalind "Carrol" Smith. by *Rinks.

House Joint Resolution No. 1093 -- Memorials, Academic Achievement - Natalie Ann Cothron, Valedictorian, Maryville Christian School. by *Overbey, *McCord.

House Joint Resolution No. 1094 -- Memorials, Death - John Alan Greeter. by *Lewis, *Fraleigh, *Hood.

House Joint Resolution No. 1095 -- Memorials, Personal Occasion - Florence Simons Currin, 100th birthday. by *Turner (Shelby).

House Joint Resolution No. 1096 -- Memorials, Recognition - Gray School. by *Davis (Washington), *Patton.

House Joint Resolution No. 1097 -- Memorials, Personal Occasion - Florence Simons Currin, 100th birthday. by *DeBerry L.

House Joint Resolution No. 1098 -- Memorials, Retirement - Jerry Ferrell. by *Casada, *Sargent.

House Joint Resolution No. 1099 -- Memorials, Academic Achievement - Erin Lemon, Salutatorian, Chattanooga Central High School. by *Turner (Hamilton).

House Joint Resolution No. 1100 -- Memorials, Academic Achievement - Charity J. Lewis, Salutatorian, Chattanooga Central High School. by *Turner (Hamilton).

House Joint Resolution No. 1101 -- Naming and Designating - National Salute to U.S. Military Day in Tennessee, May 25, 2002. by *White.

House Joint Resolution No. 1102 -- Memorials, Recognition - Richard Clark. by *Davidson.

House Joint Resolution No. 1103 -- Memorials, Public Service - Thomas Marlin. by *McDonald.

House Joint Resolution No. 1104 -- Memorials, Recognition - Ola Roberson, 2002 Mary Catherine Strobel Volunteer of the Year Award. by *McDonald.

WEDNESDAY, MAY 22, 2002 – EIGHTY-EIGHTH LEGISLATIVE DAY

House Joint Resolution No. 1107 -- Memorials, Retirement - Jim H. Rose. by *Pinion.

House Joint Resolution No. 1108 -- Memorials, Interns - Christopher Allen Holt. by *Head, *Kisber, *Cole (Dyer).

House Joint Resolution No. 1109 -- Memorials, Recognition - Bill Lee. by *Boyer.

SENATE JOINT RESOLUTIONS (Congratulatory and Memorializing)

Pursuant to **Rule No. 17**, the resolution(s) listed was/were noted as being placed on the Supplemental Consent Calendar for May 22, 2002:

Senate Joint Resolution No. 813 -- Memorials, Death - Worrick Gale Robinson. by *Atchley, *Atchley, *Blackburn, *Burchett, *Burks, *Carter, *Clabough, *Cohen, *Cooper J, *Crowe, *Crutchfield, *Davis L, *Dixon, *Elsea, *Ford J, *Fowler, *Graves, *Harper, *Haun, *Haynes, *Henry, *Herron, *Jackson, *Kurita, *Kyle, *McNally, *Miller J, *Norris, *Person, *Ramsey, *Rochelle, *Trail, *Wilder, *Williams, Sen..

RULES SUSPENDED

Rep. L. DeBerry moved that the rules be suspended to take up the Supplemental Consent Calendar out of order, which motion prevailed.

SUPPLEMENTAL CONSENT CALENDAR

House Resolution No. 314 -- Memorials, Academic Achievement - Fu'Jetta D. Green, Valedictorian, Mitchell High School. by *Cooper B.

House Resolution No. 315 -- Memorials, Academic Achievement - Gregory R. Channell, Valedictorian, Loudon High School. by *Johnson.

House Resolution No. 316 -- Memorials, Academic Achievement - Christopher William Sherman, Salutatorian, Loudon High School. by *Johnson.

House Resolution No. 317 -- Memorials, Interns - Tonetria Crossfield. by *Chumney, *Maddox, *DeBerry J.

House Resolution No. 318 -- Memorials, Interns - Dorothy Camille Harris. by *Chumney, *Maddox, *DeBerry J.

House Resolution No. 319 -- Memorials, Interns - Joshua C. Powell. by *Armstrong, *Tindell.

House Resolution No. 320 -- Memorials, Recognition - Sarah Naomi Dawson. by *Bowers.

WEDNESDAY, MAY 22, 2002 – EIGHTY-EIGHTH LEGISLATIVE DAY

House Resolution No. 321 -- Memorials, Academic Achievement - Leah Cortni Spellen. by *Bowers.

House Resolution No. 322 -- Memorials, Personal Occasion - Clara Hill McMillin, 80th birthday. by *Naifeh.

House Resolution No. 323 -- Memorials, Academic Achievement - David Kyle Parks, Valedictorian, Sequoyah High School. by *Johnson, *McKee.

House Resolution No. 324 -- Memorials, Academic Achievement - Lucas Boring, Salutatorian, Sequoyah High School. by *Johnson, *McKee.

House Resolution No. 325 -- Memorials, Academic Achievement - Andrea Lauren Beard, Salutatorian, Greenback High School. by *Johnson, *Overbey.

House Resolution No. 326 -- Memorials, Academic Achievement - Russell Tipton, Valedictorian, Greenback High School. by *Johnson, *Overbey.

House Resolution No. 327 -- Memorials, Interns - Joscelyn Jeanne Adkins. by *Maddox, *Chumney, *DeBerry J.

House Resolution No. 328 -- Memorials, Recognition - Jaquetta Brooks. by *Armstrong, *Tindell.

House Resolution No. 329 -- Memorials, Retirement - Dr. Nolan Barham. by *Hood, *Rowland, *Beavers.

House Resolution No. 330 -- Memorials, Retirement - Rachel Morton. by *Hood, *Rowland, *Beavers.

House Resolution No. 331 -- Memorials, Retirement - Gloria Field. by *Hood, *Rowland, *Beavers.

House Resolution No. 332 -- Memorials, Retirement - Carolyn Reeves. by *Hood, *Rowland, *Beavers.

House Resolution No. 333 -- Memorials, Retirement - Jerry Bishop. by *Hood, *Rowland, *Hood.

House Resolution No. 334 -- Memorials, Retirement - Dorothy Smith. by *Hood, *Rowland, *Beavers.

House Resolution No. 335 -- Memorials, Retirement - Pollyanna Jones. by *Hood, *Rowland, *Beavers.

House Resolution No. 336 -- Memorials, Retirement - Elizabeth "Betty" Hord. by *Hood, *Rowland, *Beavers.

House Resolution No. 337 -- Memorials, Retirement - Dale Patterson. by *Hood, *Rowland, *Beavers.

WEDNESDAY, MAY 22, 2002 – EIGHTY-EIGHTH LEGISLATIVE DAY

House Resolution No. 338 -- Memorials, Retirement - Mary Rossman. by *Hood, *Rowland, *Beavers.

House Resolution No. 339 -- Memorials, Retirement - Henry Jones. by *Hood, *Rowland, *Beavers.

House Resolution No. 340 -- Memorials, Retirement - Melvin Hatcher. by *Hood, *Rowland, *Beavers.

House Resolution No. 341 -- Memorials, Retirement - Susan Summers. by *Hood, *Rowland, *Beavers.

House Resolution No. 342 -- Memorials, Retirement - Wanda Bryant. by *Hood.

House Resolution No. 343 -- Memorials, Retirement - Barbara Denton. by *Hood, *Rowland.

House Resolution No. 344 -- Memorials, Retirement - Carolyn Maples. by *Hood, *Rowland, *Beavers.

House Resolution No. 345 -- Memorials, Retirement - Christine Faulk. by *Hood, *Rowland, *Beavers.

House Resolution No. 346 -- Memorials, Retirement - Esther Victory. by *Hood, *Rowland, *Beavers.

House Resolution No. 347 -- Memorials, Retirement - Penny Hooper. by *Hood, *Rowland, *Beavers.

House Resolution No. 348 -- Memorials, Retirement - David Ralston. by *Hood, *Rowland, *Beavers.

House Resolution No. 349 -- Memorials, Retirement - Ed Shirley. by *Hood, *Rowland, *Beavers.

House Resolution No. 350 -- Memorials, Retirement - Rosalind "Carrol" Smith. by *Rinks.

House Joint Resolution No. 1093 -- Memorials, Academic Achievement - Natalie Ann Cothron, Valedictorian, Maryville Christian School. by *Overbey, *McCord.

House Joint Resolution No. 1094 -- Memorials, Death - John Alan Greeter. by *Lewis, *Fraleigh, *Hood.

House Joint Resolution No. 1095 -- Memorials, Personal Occasion - Florence Simons Currin, 100th birthday. by *Turner (Shelby).

House Joint Resolution No. 1096 -- Memorials, Recognition - Gray School. by *Davis (Washington), *Patton.

WEDNESDAY, MAY 22, 2002 – EIGHTY-EIGHTH LEGISLATIVE DAY

House Joint Resolution No. 1097 -- Memorials, Personal Occasion - Florence Simons Currin, 100th birthday. by *DeBerry L.

House Joint Resolution No. 1098 -- Memorials, Retirement - Jerry Ferrell. by *Casada, *Sargent.

House Joint Resolution No. 1099 -- Memorials, Academic Achievement - Erin Lemon, Salutatorian, Chattanooga Central High School. by *Turner (Hamilton).

House Joint Resolution No. 1100 -- Memorials, Academic Achievement - Charity J. Lewis, Salutatorian, Chattanooga Central High School. by *Turner (Hamilton).

House Joint Resolution No. 1101 -- Naming and Designating - National Salute to U.S. Military Day in Tennessee, May 25, 2002. by *White.

House Joint Resolution No. 1102 -- Memorials, Recognition - Richard Clark. by *Davidson.

House Joint Resolution No. 1103 -- Memorials, Public Service - Thomas Marlin. by *McDonald.

House Joint Resolution No. 1104 -- Memorials, Recognition - Ola Roberson, 2002 Mary Catherine Strobel Volunteer of the Year Award. by *McDonald.

House Joint Resolution No. 1107 -- Memorials, Retirement - Jim H. Rose. by *Pinion.

House Joint Resolution No. 1108 -- Memorials, Interns - Christopher Allen Holt. by *Head, *Kisber, *Cole (Dyer).

House Joint Resolution No. 1109 -- Memorials, Recognition - Bill Lee. by *Boyer.

Senate Joint Resolution No. 813 -- Memorials, Death - Worrick Gale Robinson. by *Atchley, *Atchley, *Blackburn, *Burchett, *Burks, *Carter, *Clabough, *Cohen, *Cooper J, *Crowe, *Crutchfield, *Davis L, *Dixon, *Elsea, *Ford J, *Fowler, *Graves, *Harper, *Haun, *Haynes, *Henry, *Herron, *Jackson, *Kurita, *Kyle, *McNally, *Miller J, *Norris, *Person, *Ramsey, *Rochelle, *Trail, *Wilder, *Williams, Sen..

Rep. Lewis moved that all members voting aye on House Joint Resolution No. 1094 be added as sponsors, which motion prevailed.

Rep. Bowers moved that all members voting aye on House Resolution(s) No(s). 320, 321, House Joint Resolution(s) No(s). 1095 and 1097 be added as sponsors, which motion prevailed.

Rep. McDonald moved that all members voting aye on House Joint Resolution(s) No(s). 1103, 1104 and Senate Joint Resolution No. 813 be added as sponsors, which motion prevailed.

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Rep. Cooper moved that all members voting aye on House Resolution No. 314 be added as sponsors, which motion prevailed.

Rep. Boyer moved that all members voting aye on House Joint Resolution No. 1109 be added as sponsors, which motion prevailed.

Pursuant to **Rule No. 50**, Rep. Miller moved that all House Bills having companion Senate Bills and are on the Clerk's desk be conformed and substituted for the appropriate House Bill, all Senate and House Bills on the Supplemental Consent Calendar be passed on third and final consideration, all House Resolutions and House Joint Resolutions be adopted, and all Senate Joint Resolutions on the Supplemental Consent Calendar be concurred in, which motion prevailed by the following vote:

Ayes98
Noes0

Representatives voting aye were: Armstrong, Arriola, Baird, Beavers, Bittle, Black, Bone, Bowers, Boyer, Briley, Brooks, Brown, Buck, Bunch, Buttry, Caldwell, Casada, Chumney, Clem, Cole (Carter), Cole (Dyer), Cooper, Curtiss, Davidson, Davis (Washington), Davis (Cocke), DeBerry J, DeBerry L, Dunn, Ferguson, Fitzhugh, Ford, Fowlkes, Fraley, Garrett, Givens, Godsey, Goins, Hagood, Hargett, Hargrove, Harwell, Head, Hood, Johnson, Jones U, Kent, Kernell, Kisber, Langster, Lewis, Maddox, McCord, McDaniel, McDonald, McKee, McMillan, Miller, Montgomery, Mumpower, Newton, Odom, Overbey, Patton, Phelan, Phillips, Pinion, Pleasant, Pruitt, Rhinehart, Ridgeway, Rinks, Roach, Rowland, Sands, Sargent, Scroggs, Sharp, Shaw, Shepard, Stanley, Tidwell, Tindell, Todd, Towns, Turner (Hamilton), Turner (Shelby), Turner (Davidson), Vincent, Walker, West, Westmoreland, White, Whitson, Windle, Winningham, Wood, Mr. Speaker Naifeh -- 98.

A motion to reconsider was tabled.

REGULAR CALENDAR, CONTINUED

House Bill No. 1266 -- Health Care - Increases number of authorized beds at private, community-based, not-for-profit immediate care and mental care facilities under certain circumstances. Amends TCA Section 71-5-105. by *Wood. (*SB820 by *Fowler)

Rep. Wood moved that House Bill No. 1266 be passed on third and final consideration.

Rep. Armstrong moved adoption of Health and Human Resources Committee Amendment No. 1 as follows:

Amendment No. 1

AMEND House Bill No. 1266 by deleting all the language after the enacting clause and by substituting instead the following:

SECTION 1: There is created a special joint committee to study the need for placement of additional beds at private community-based, not-for-profit ICF/MR facilities and to make appropriate legislative proposals to implement any recommendations the committee determines to be beneficial to the State of Tennessee and its citizens. The committee shall specifically consider the necessity of adding beds to certain facilities in light of the costs of such additions. The committee shall also study whether additional capacity should be added to other forms of housing such as supported living and the effects of changes on developmental disability centers.

SECTION 2. The committee shall consist of ten (10) legislative members. The speaker of the house of representatives shall appoint five (5) legislative members from the membership of the house health and human resources committee and the house finance committee. The speaker of the senate shall appoint five (5) legislative members from the membership of the senate general welfare, health and human resources committee and the senate finance, ways and means committee. The committee shall be convened by the legislative member with the most years of continuous legislative service, and, at its organizational meeting shall elect from its membership, a chair, vice-chair and such other officers, as it may deem necessary.

SECTION 3. The departments of health and mental health and developmental disabilities and the division of mental retardation services shall provide assistance to the special study committee upon request of the chair.

SECTION 4. Legislative members of the special study committee who are duly elected members of the general assembly shall remain members of such committee until the committee reports its findings and recommendations to the general assembly.

SECTION 5. The study committee shall timely report its findings and recommendations, including any proposed legislation or interim reports, to the One Hundred Third General Assembly no later than February 15, 2003, at which time the committee shall cease to exist.

SECTION 6. This act shall take effect upon becoming a law, the public welfare requiring it.

On motion, Health and Human Resources Committee Amendment No. 1 was adopted.

Rep. Kisber moved adoption of Finance, Ways and Means Committee Amendment No. 1 as Amendment No. 2 as follows:

Amendment No. 2

AMEND House Bill No. 1266 by deleting all the language of the bill after the enacting clause, as amended by House Health and Human Resources Committee Amendment No. 1 (HA1102), and by substituting instead the following:

SECTION 1. The fiscal review committee is directed to study the need for placement of additional beds at private community-based, not-for-profit ICF/MR facilities and to make appropriate legislative proposals to implement any recommendations the committee determines to be beneficial to the State of Tennessee and its citizens. The committee shall specifically consider the necessity of adding beds to certain facilities in light of the costs of such additions. The committee shall also study whether additional capacity should be added to other forms of housing such as supported living and the effects of changes on developmental disability centers.

SECTION 2. The departments of health and mental health and developmental disabilities and the division of mental retardation services shall provide assistance to the fiscal review committee upon request of the chair.

SECTION 3. The fiscal review committee shall timely report its findings and recommendations, including any proposed legislation or interim reports, to the One Hundred Third General Assembly no later than February 15, 2003.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.

On motion, Finance, Ways and Means Committee Amendment No. 1 as House Amendment No. 2 was adopted.

Rep. Wood moved that **House Bill No. 1266**, as amended, be passed on third and final consideration, which motion prevailed by the following vote:

Ayes	97
Noes	0

Representatives voting aye were: Armstrong, Arriola, Baird, Beavers, Bittle, Black, Bone, Bowers, Boyer, Briley, Brooks, Brown, Buck, Bunch, Buttry, Caldwell, Casada, Chumney, Clem, Cole (Carter), Cole (Dyer), Cooper, Curtiss, Davidson, Davis (Washington), Davis (Cocke), DeBerry L, Dunn, Ferguson, Fitzhugh, Ford, Fowlkes, Fraley, Garrett, Givens, Godsey, Goins, Hagood, Hargett, Hargrove, Harwell, Head, Hood, Johnson, Jones U, Kent, Kernell, Kisber, Langster, Lewis, Maddox, McCord, McDaniel, McDonald, McKee, McMillan, Miller, Montgomery, Mumpower, Newton, Odom, Overbey, Patton, Phelan, Phillips, Pinion, Pleasant, Pruitt, Rhinehart, Ridgeway, Rinks, Roach, Rowland, Sands, Sargent, Scroggs, Sharp, Shaw, Shepard, Stanley, Tidwell, Tindell, Todd, Towns, Turner (Hamilton), Turner (Shelby), Turner (Davidson), Vincent, Walker, West, Westmoreland, White, Whitson, Windle, Winningham, Wood, Mr. Speaker Naifeh -- 97.

A motion to reconsider was tabled.

WEDNESDAY, MAY 22, 2002 – EIGHTY-EIGHTH LEGISLATIVE DAY

***House Bill No. 3125** -- Gambling - Exempts pinball machines manufactured before 1980 from prohibition against gambling. Amends TCA Title 39, Chapter 17. by *Armstrong. (SB3025 by *Haun)

Further consideration of House Bill No. 3125 previously considered on today's Calendar.

Rep. Armstrong moved that House Bill No. 3125 be reset for the Regular Calendar on May 29, 2002, which motion prevailed.

House Bill No. 2808 -- Workers' Compensation - Defines mental injury for workers' compensation law. Amends TCA Title 50, Chapter 6. by *Cole (Dyer), *Bowers. (*SB2568 by *Clabough)

Further consideration of House Bill No. 2808 previously considered on today's Calendar.

BILL RE-REFERRED

Rep. Cole (Dyer) moved that House Bill No. 2808 be re-referred to the House Calendar and Rules Committee, which motion prevailed.

RULES SUSPENDED

Rep. Boyer moved that the rules be suspended for the purpose of introducing House Joint Resolution No. 1110 out of order, which motion prevailed.

House Joint Resolution No. 1110 -- Memorials, Retirement - Sonja G. Armstrong. by *Boyer, *Armstrong.

On motion, the rules were suspended for the immediate consideration of the resolution.

On motion of Rep. Boyer, the resolution was adopted.

A motion to reconsider was tabled.

MESSAGE CALENDAR

HOUSE ACTION ON SENATE MESSAGE

***Senate Bill No. 93** -- Sunset Laws - Health facilities commission, June 30, 2007. Amends TCA Title 4, Chapter 29 and Title 68, Chapter 11. by *Harper. (HB976 by *Kernell, *Brooks, *Cooper B)

Further consideration of Senate Bill No. 93 previously considered on May 8, 2002 and May 15, 2002, at which time it was reset for today's Message Calendar.

**CONFERENCE COMMITTEE REPORT
ON SENATE BILL NO. 93**

The House and Senate Conference Committee appointed pursuant to motions to resolve the differences between the two houses on Senate Bill No. 93 (House Bill No. 976) has met and recommends deleting all the language in the printed bill after the enacting clause and by substituting the following:

SECTION 1. Tennessee Code Annotated, Section 4-29-222 (a), is amended by deleting item (20) in its entirety.

SECTION 2. Tennessee Code Annotated, Section 4-29-225(a), is amended by adding two (2) new items thereto, as follows:

() Health services and development agency, created by this act;

() State health planning and advisory board, created by this act;

SECTION 3. Tennessee Code Annotated, Title 68, Chapter 11, Part 1, is repealed in its entirety effective July 1, 2002.

SECTION 4. Tennessee Code Annotated, Title 68, Chapter 11, is amended by adding a new part 16 as follows:

Section 68-11-1601. This part shall be known and may be cited as the "Tennessee Health Services and Planning Act of 2002."

68-11-1602. As used in this part, unless the context otherwise requires:

(1) "Agency" and "health services and development agency" means the agency created by this part to administer the certificate of need program and related activities;

(2) "Board" and "state planning and advisory board" mean the board created by this part to develop the state health plan and other related studies;

(3) "Certificate of need" means a permit granted by the health services and development agency to any person for the establishment or modification of a health care institution, facility, or covered health service, at a designated location;

(4) "Conflict of Interest" means any matter before the agency in which the member or employee of the agency has a direct or indirect interest which is in conflict or gives the appearance of conflict with the discharge of the member's or employee's duties;

(A) "Direct interest" means a pecuniary interest in the persons involved in a matter before the agency. This interest applies to the agency member or employee, the agency member's or employee's relatives or an individual with whom or business as to which the member or employee has a pecuniary interest. For the purposes of this act, a relative is a spouse, parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, niece, or nephew by blood, marriage or adoption; and

(B) "Indirect interest" means a personal interest in the persons involved in a matter before the agency that is in conflict or gives the appearance of conflict with the discharge of the agency member's or employee's duties;

(5) "Department" means the department of health;

(6) "Ex parte communications" mean communications as defined by § 4-5-304;

(7) "Facility" means any real property or equipment owned, leased, or used by a health care institution for any purpose, other than as an investment;

(8)(A) "Health care institution" means any agency, institution, facility or place, whether publicly or privately owned or operated, which provides health services and which is one (1) of the following: nursing home; recuperation center; hospital; ambulatory surgical treatment center; birthing center; mental health hospital; mental retardation institutional habilitation facility; home care organization or any category of service provided by a home care organization for which authorization is required under part 2 of this chapter; outpatient diagnostic center; rehabilitation facility; residential hospice; non-residential methadone treatment facility or mental health residential treatment facility;

(B) "Health care institution" does not include:

(i) Ground ambulances;

(ii) Homes for the aged;

(iii) Any premises occupied exclusively as the professional practice office of a physician licensed pursuant to the provisions of title 63, chapter 6, part 2 and title 63, chapter 9, or dentist licensed by the state and controlled by such physician or dentist;

(iv) Administrative office buildings of public agencies related to health care institutions; or

(v) Christian Science sanatoriums operated, or listed and certified, by the First Church of Christ Scientist, Boston, Massachusetts;

(9) "Health service" means clinically related (i.e., diagnostic, treatment, or rehabilitation) services and includes those services specified as requiring a certificate of need under § 68-11-1607;

(10) "Home care organization" means any entity licensed as such by the department which is staffed and organized to provide "home health services," or "hospice services" as defined by § 68-11-201, to patients in either their regular or temporary place of residence;

(11) "Letter of intent" means the form prescribed by the agency which shall require a brief project description, location, estimated project cost, owner of the project and description of services to be performed;

(12) "Licensed beds" means the number of beds licensed by the agency having licensing jurisdiction over the facility;

(13) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions, which is used to provide medical and other health services and which costs more than the amounts determined under § 68-11-1607(a); "major medical equipment" does not apply to any equipment not directly related to patient care;

(14) "Patient" means and includes, but is not limited to, any person who is suffering from an acute or chronic physical or mental illness or injury or who is crippled, convalescent, infirm, or mentally retarded, or who is in need of obstetrical, surgical, medical, nursing, psychiatric or supervisory care;

(15) "Person" means any individual, trust or estate, firm, partnership, association, stockholder, joint venture, corporation or other form of business organization, the state of Tennessee and its political subdivisions or parts thereof, and any combination of persons herein specified, public or private; "person" does not include the United States or any agency or instrumentality thereof, except in the case of voluntary submission to the regulations established by this part;

(16) "Rehabilitation facility" means an inpatient or residential facility which is operated for the primary purpose of assisting in the rehabilitation of physically disabled persons through an integrated program of medical and other services which are provided under professional supervision;

(17) "Review Cycle" means the timeframe set for the review and initial decision on applications for certificate of need applications that have been deemed complete. The first day of the month is the first day of the review cycle; and

(18) "State health plan" means the plan that is developed by the state planning and advisory board pursuant to this part. The plan shall include clear statements of goals, objectives, criteria and standards to guide the development of health care programs administered or funded by the state of Tennessee through its departments, agencies or programs, and used by the agency when issuing certificates of need.

Section 68-11-1603. It is hereby declared to be the public policy of this state that the establishment and modification of health care institutions, facilities and services shall be accomplished in a manner which is orderly, economical and consistent with the effective development of necessary and adequate means of providing for the health care of the people of Tennessee. To this end, the provisions of this section shall be equitably applied to all health care entities, regardless of ownership or type, except those owned and operated by the United States government.

Section 68-11-1604. (a) There is hereby created a health services and development agency which has jurisdiction and powers relating to the certification of need and related reporting of all health care institutions, as defined by and subject to this chapter.

(b)(1) The agency shall have nine (9) members including the comptroller of the treasury or an employee of such department upon the designation of the comptroller of the treasury, the state director of TennCare or its successor or an employee of such department upon the designation of the director, the commissioner of the department of commerce and insurance or an employee of such department upon the designation of the commissioner, one (1) consumer member appointed by the speaker of the senate, one (1) consumer member appointed by the speaker of the house of representatives and five (5) members appointed by the governor which include one (1) person who has recent experience as an executive officer of a hospital or hospital system from a list of one (1) nominee submitted by the Tennessee Hospital Association; one (1) representative of the nursing home industry from a list of one (1) nominee submitted by the Tennessee Health Care Association; one (1) duly licensed physician from a list of one (1) nominee submitted by the Tennessee Medical Association; and one (1) consumer member .

(2) In making appointments to the health services and development agency, the governor and the speakers shall strive to ensure that racial minorities, females, persons sixty (60) years of age and older and the three (3) grand divisions of the state are represented.

(3) The consumer members shall be persons who are knowledgeable of health needs and services and who are further knowledgeable by training or experience in health care facility design or construction, financing of health care services or construction, reimbursement of health care services, or general health care economics. The consumer members shall not be a direct provider of health care goods or services.

(c)(1) No member of the agency shall serve beyond the expiration of such member's term, whether or not a successor has been appointed by the governor or the speakers.

(2) Except for the comptroller of the treasury, the commissioner of the department of commerce and insurance, the director of TennCare, or their appointed employees, agency members shall be appointed for three-year terms and no member shall serve more than two consecutive three-year terms. The terms shall be staggered so that the initial term for the physician and the consumer member appointed by the governor shall be three (3) years; the consumer member appointed by the speaker of the senate shall be one (1) year; and the nursing home representative, the hospital representative and the consumer member appointed by the speaker of the house of representatives shall be two (2) years. Following the initial terms, all terms shall be three years.

(3) If any member is absent from three (3) consecutive, regularly scheduled public meetings of the agency, such individual's membership shall be automatically terminated, and the position shall be considered as vacant.

(d)(1) Each member of the agency shall receive fifty dollars (\$50.00) per diem when actually engaged in the discharge of such member's official duties, and in addition, shall be reimbursed for all travel and other necessary expenses. However, agency members that are state employees shall not receive such per diem but shall be reimbursed for all travel and other necessary expenses.

(2) All expenditures shall be claimed and paid in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration, and approved by the attorney general and reporter.

(e)(1) The agency, at its first meeting and the first meeting in each second fiscal year thereafter, shall elect one of the consumer members as chair of the agency for a term of two years. No member shall serve consecutive terms as chair. At the same meeting, the agency shall elect from its members a vice chair to serve a term of one year. No member shall serve two consecutive terms as vice-chair.

(2) Meetings of the agency shall be held as frequently as its duties may require.

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(3) Six (6) members shall constitute a quorum, but a vacancy on the agency shall not impair its power to act.

(4) No action of the agency shall be effective unless such action is concurred in by a majority of its members present and voting.

(5) In the event of a tie vote, the action shall be considered disapproved.

(6) The agency shall record by name the votes taken on all actions of the agency.

(7)(A) All agency members shall annually review and sign a statement acknowledging the statute, rules and policies concerning conflicts of interest.

(B) Any member, upon determining that a matter scheduled for consideration by the agency results in a conflict with a direct interest shall immediately notify the executive director and shall recuse himself or herself from any deliberation of the matter, making any recommendation or testifying concerning the matter or voting on the matter. The member shall join the public during the proceedings.

(i) Any member with an indirect interest shall publicly acknowledge such interest.

(ii) All members shall make every reasonable effort to avoid even the appearance of a conflict of interest. If a member is uncertain whether the relationship justifies recusal, the member shall follow the determination by the legal counsel for the agency.

(iii) A determination by the agency or any court that a member of the agency with a direct interest failed to provide notice and recuse from deliberations of the matter, making any recommendation or testifying concerning the matter or voting on the matter shall automatically be terminated from the agency and the position shall be considered vacant. The member shall not be eligible for appointment to any agency, board or commission of the state for a period of two years.

(iv) The executive director, upon determining that a conflict exists for the executive director or any member of the staff, shall notify the chairman of the agency and take such action as they prescribe and pursuant to this part.

Section 68-11-1605. In addition to the powers granted elsewhere in this part, the agency has the duty and responsibility to:

(1) Receive and consider applications for certificates of need, to review recommendations thereon, and to grant or deny certificates of need on the basis of the merits of such applications within the context of the local, regional and state health needs and plans, including, but not limited to, the state health plan developed pursuant to § 68-11-1625, in accordance with the provisions of this part;

(2) Consider and make recommendations and comment to the governor concerning the state health plan as developed and submitted by the state health planning and advisory board; and

(3) Promulgate rules, regulations and procedures deemed necessary by the agency for the fulfillment of its duties and responsibilities under this part and contract when necessary for the implementation of the certificate of need program and health planning as defined by this part;

(4) Weigh and consider the health care needs of consumers, particularly women; racial and ethnic minorities; TennCare/medicaid recipients and low-income groups whenever the agency performs its duties or responsibilities assigned by law. Section 68-11-1606.(a) The agency shall appoint an executive director qualified by education and experience. The executive director shall demonstrate knowledge and experience in the areas of public administration and health policy development.

(b) The agency shall fix the salary of the executive director, who shall serve at the pleasure of the agency. The executive director shall be the chief administrative officer of the agency and the appointing authority, exercising general supervision over all persons employed by the agency.

(c) The executive director shall have the following duties:

(1) Keep a written record of all proceedings and transactions of the agency, which shall be open to public inspection during regular office hours;

(2) Administer the certificate of need process;

(3) Represent the agency before the general assembly;

(4) Oversee the issuance of responses to requests for determination regarding the applicability of the provisions of this part;

(5) Prepare the agenda, including consent and emergency calendars, and notice to the general public of all meetings and public hearings of the agency;

(6) Employ such personnel, within the budget, to assist in carrying out the provisions of this part;

(7) Carry out all policies, rules and regulations that are adopted by the agency and supervise the expenditure of funds.

(d) In addition to the duties provided in subsection (c), the agency shall have the authority to delegate, and it is the intent of the general assembly that the agency exercises such authority to delegate, the following responsibilities and duties to the executive director:

(1) Granting approval, denial deferral or referral to the agency of applications for certificate of need in accordance with §68-11-1609; and

(2) Granting approval or denial of modifications, changes of conditions or ownership, and extensions of certificates of need as in accordance with provisions of this part.

(e) The delegation of authority pursuant to §68-11-1606(d) shall continue until specifically revoked by the agency as a result of a determination that such revocation is necessary to insure the proper and orderly operations of the agency.

(f) Actions taken by the executive director shall be final as if the actions were taken by the agency; provided, that a member of the agency may, in the sole discretion of the member, request that the agency review the action of the executive director. Such request shall be made within fifteen (15) days of the notice of the action by the executive director, in which case the action shall not become final until the agency has rendered its final decision in the matter. The review shall be heard within forty-five (45) days of the request for review of the action.

(g) A party desiring the agency to review an action by the executive director must file a written petition for review with the agency within fifteen (15) days of notice of the action. The executive director shall notify the members within two (2) business days that a request for agency review of the initial action has been filed. Any member of the agency shall have fifteen (15) days to request an agency review. If no member requests a review within said fifteen (15) days, such petition shall be deemed denied. If the agency grants the petition to review of the initial action of the executive director, the agency shall set a public hearing reviewing the action. The public hearing shall be held within forty-five (45) days from the date the review was requested by the member. This shall not be construed to limit in any way the authority of any agency member to request a review within fifteen (15) days of the notice of the initial action of the executive director.

(h) All reviews by the agency of decisions made by the executive director shall be upon the written notice of the action of the executive of the director, the application file, reports from the appropriate reviewing agency, or such information as the agency shall direct.

(i) If the agency does not exercise its discretion to review a decision of the executive director, the executive director shall issue a certificate of need or other notices of the decision, which shall be subject to judicial review in the same manner as are final actions of the agency.

Section 68-11-1607. (a) No person may perform the following actions in the state except after applying for and receiving a certificate of need for the same:

(1) The construction, development, or other establishment of any type of health care institution;

(2) Modification of a health care institution, other than a hospital, including renovations and additions to facilities, where such modification requires a capital expenditure greater than two million dollars (\$2,000,000), or in the case of a hospital where such modification requires a capital expenditure greater than five million dollars (\$5,000,000). Acquisition of real property as an investment, not for immediate use by the health care institution, shall not be deemed a modification; however, the cost of such property (or its value at the time of application, regardless of whether acquired by lease, loan, or gift) shall be included as required by agency rules as part of the total project cost of any later proposed project for the improvement, development, or use of the property in a manner which does modify the institution's facilities or services in a manner which requires a certificate of need. This provision does not apply to expenditures not directly related to patient care;

(3) In the case of a health care institution, any change in the bed complement, regardless of cost, which:

(A) Increases by one (1) or more the total number of licensed beds;

(B) Redistributes beds from acute to long-term care categories;

(C) Redistributes beds from any category to rehabilitation, child and adolescent psychiatric, or adult psychiatric; or

(D) Relocates beds to another facility or site;

(4) Initiation of any of the following health care services: air ambulance, burn unit, neonatal intensive care unit, open heart surgery, extracorporeal lithotripsy, magnetic resonance imaging, cardiac catheterization, linear accelerator, positron emission tomography, swing beds, home health, hospice, psychiatric, rehabilitation or hospital-based alcohol and drug treatment for adolescents provided under a systematic program of care longer than twenty-eight (28) days, or methadone treatment provided through a facility licensed as a non-residential methadone treatment facility.

(5) A change in the location or replacement of existing or certified facilities providing health care services, major medical equipment, or health care institutions, except for home health agencies as permitted by agency rule. "Change in location," as provided in this subdivision, shall not be construed to mean each time a piece of mobile major medical equipment is moved to a facility site for which a certificate of need has been issued;

(6) The acquisition by any person of major medical equipment for service to patients, the cost of which, exclusive of renovations or modifications, exceeds one million five hundred thousand dollars (\$1,500,000); provided, that the requirements of this subdivision shall not apply to the replacement of the same or similar equipment or an upgrade of equipment which improves the quality or cost effectiveness of the service. In order to receive such exemption for replacement or upgrade of equipment, the person acquiring such replacement or upgrade shall file a written notice of such replacement or upgrade with the health services and development agency. The notice filed shall contain a description of the original equipment and the replacement or upgraded equipment, together with the cost of such equipment. The health services and development agency shall consider the information contained in the notice to determine if the replacement or upgraded equipment meets the requirements of this subdivision; and

(7) The discontinuation of any obstetrical or maternity service.

(b) No agency of the state, or of any county or municipal government, shall approve any grant of funds for, or issue any license to, a health care institution for any portion or activity thereof which is established, modified, relocated, changed, or resumed, or which constitutes a covered health care service, in a manner in violation of the provisions of this part. If any agency of the state, or any county or municipal government approves any grant of funds for, or issues any license to any person or institution that a certificate of need was required but was not granted, the license shall become void and the funds shall be refunded to the state within ninety (90) days. The agency has the authority to impose civil penalties and petition any circuit or chancery court having jurisdiction to enjoin any person who is in violation as further defined in this part.

(c)(1) Each application shall be commenced by the filing of a letter of intent. The letter of intent shall be filed between the first day of the month and the tenth day of the month, inclusive, prior to the commencement of the review cycle in which the application is to be considered. At the time of filing, the applicant shall cause the letter of intent to be published in a newspaper of general circulation in the proposed service area of the project. The published letter of intent must contain a statement:

(A) That any health care institution wishing to oppose the application must file written notice with the agency no later than fifteen (15) days before the agency meeting at which the application is originally scheduled; and

(B) That any other person wishing to oppose the application must file a written objection with the agency at or prior to the consideration of the application by the agency.

(2) Persons desiring to file a certificate of need application seeking a simultaneous review regarding a similar project for which a letter of intent has been filed, shall file with the agency a letter of intent within ten (10) days after publication of the first filed letter of intent. A copy of any letter of intent filed after the first letter of intent shall be mailed or delivered to the first filed applicant, and shall be published in a newspaper of general circulation in the proposed service area of the first filed applicant within ten (10) days after publication by the first filed applicant. The applications shall be considered and decided by the health services and development agency simultaneously. The agency may refuse to consider the applications simultaneously, if it finds that the applications do not meet the requirements of "simultaneous review" under the rules of the agency.

(3) Applications for a certificate of need, including simultaneous review applications, shall be filed within five (5) days from the date of publication of the letter of intent. Within ten (10) days of the filing of an application for a nonresidential methadone treatment facility with the agency, the applicant shall send a notice to the county executive of the county in which the facility is proposed to be located, the member of the house of representatives and the senator of the general assembly representing the district in which the facility is proposed to be located, and to the mayor of the municipality, if the facility is proposed to be located within the corporate boundaries of a municipality, by certified mail, return receipt requested, informing such officials that an application for a nonresidential methadone treatment facility has been filed with the agency by the applicant. All applications, original and simultaneous review, shall not enter the next review cycle unless filed with the agency within such time as to assure that such application is deemed complete in accordance with the rules of the agency.

(4) If there are two (2) or more applications to be reviewed simultaneously in accordance with this part and the rules of the agency, and one (1) or more of those applications is not deemed complete to enter the review cycle, the other applications that are deemed complete shall enter the review cycle. The application or applications that are not deemed complete to enter the review cycle will not be considered with the applications deemed complete and entering the review cycle.

(5) Review cycles shall begin on the first day of each of the following months: January, March, May, July, September, and November; provided, that the agency may expand the beginning of the review cycle to other months by rule. Written notice of the beginning of the review cycle will be made to all applicants deemed complete by the agency for that review cycle. The review cycle shall also be distributed to the members of the agency. If an application is not deemed complete within sixty (60) days after written notification is given to the applicant by the agency staff that the application is deemed incomplete, the application shall be deemed void. If the applicant decides to re-submit the application, the applicant shall comply with all procedures as set out by this part and a new filing fee shall accompany the application.

(6) Each application filed with the agency shall be accompanied by a nonrefundable examination fee which will be fixed by the rules of the agency.

(7) All information provided in the application or any information submitted to the agency in support of an application shall be true and correct. No substantive amendments to the application, as defined by rule of the agency, shall be allowed.

(8) Each applicant shall designate a representative as the contact person for the applicant and shall notify the agency, in writing, of the contact person's name, address, and telephone number. The applicant shall immediately notify the agency in writing of any change in the identity of the contact person or the contact person's address. In addition to any other method of service permitted by law, the agency may serve by registered or certified mail any notice or other legal document upon the contact person at such person's last address of record in the files of the agency. Notwithstanding any provisions of law to the contrary, service in the manner specified herein shall be deemed to constitute actual service upon the applicant.

(d)(1) No communications are permitted with the members of the agency once the letter of intent initiating the application process is filed with the agency. Communications between agency members and agency staff shall not be prohibited. Any communication received by an agency member from a person unrelated to the applicant or party opposing the application shall be reported to the executive director and a written summary of such communication shall be made part of the certificate of need file.

(2) All communications between the contact person or legal counsel for the applicant and the executive director or agency staff after an application is deemed complete and placed in the review cycle are prohibited unless submitted in writing or confirmed in writing and made part of the certificate of need application file. Communications for the purposes of clarification of facts and issues that may arise after an application has been deemed complete and initiated by the executive director or agency staff are not prohibited.

(e) For purposes of this of this part, agency action shall be the same as administrative action defined in § 3-6-102.

(f)(1) Notwithstanding the provisions of this section to the contrary, Tennessee state veterans' homes pursuant to the provisions of title 58, chapter 7 shall not be required to obtain a certificate of need pursuant to this section.

(2) Notwithstanding the provisions of this section to the contrary, the beds located in any Tennessee state veterans' home pursuant to the provisions of title 58, chapter 7 shall not be considered by the health services and development agency when granting a certificate of need to a health care institution due to a change in the number of licensed beds, redistributing beds, or relocating beds pursuant to the provisions of this section.

(g) A hospital with fewer than one hundred (100) licensed beds may increase its total number of licensed beds by ten (10) beds over any period of one (1) year without obtaining a certificate of need. The hospital shall provide written notice of the proposed increase in beds to the agency on forms provided by the agency, prior to the hospital's request for review to the board of licensing health care facilities.

(h) After a person holding a certificate of need has completed the actions for which a certificate of need was granted, such certificate of need shall expire.

(i) The owners of the following types of equipment shall register such equipment with the health services and development agency: computerized axial tomographers, lithotripters, magnetic resonance imagers, linear accelerators and position emission tomography. The registration shall be in a manner and on forms prescribed by the agency and shall include ownership, location, and the expected useful life of such equipment. The first registration of all equipment as listed above shall be on or before September 30, 2002. Thereafter, registration shall occur within ninety (90) days of acquisition of the equipment. All such equipment shall be filed on an annual inventory survey developed by the agency. The survey shall include but not be limited to the identification of the equipment and utilization data according to source of payment. The survey shall be filed no later than thirty (30) days following the end of each state fiscal year. The agency is authorized to impose a penalty not to exceed fifty dollars (\$50) for each day the survey is late.

(j) Notwithstanding the provisions of this section to the contrary, an entity, or its successor, that was formerly licensed as a hospital, and which has received from the commissioner of health a written determination that it will be eligible for designation as a critical access hospital under the medicare rural hospital flexibility program, is not required to obtain a certificate of need to establish a hospital qualifying for such designation, if it meets the requirements of this subsection. In order to qualify for the exemption set forth in this subsection, the entity proposing to establish a critical access hospital must publish notice of its intent to do so in a newspaper of general circulation in the county where the hospital will be located and in contiguous counties. Such notice shall be published at least twice within a fifteen-day period. The written determination from the department of health and proof of publication required by this subsection shall be filed with the agency within ten (10) days after the last date of publication. If no health care institution within the same county or contiguous counties files a written objection to the proposal with the agency within thirty (30) days of the last publication date, then the exemption set forth in this subsection shall be applicable; provided, this exemption shall apply only to the establishment of a hospital that qualifies as a critical access hospital under the medicare rural flexibility program and not to any other activity or service. If a written objection by a health care institution within the same county or contiguous counties is filed with the agency within thirty (30) days from the last date of publication, then the exemption set forth in this subsection shall not be applicable.

(k)(1) A nursing home may increase its total number of licensed beds by the lesser of ten (10) beds or ten percent (10%) of its licensed capacity over any period of one (1) year without obtaining a certificate of need. The nursing home shall provide written notice of the increase in beds to the agency on forms provided by the agency prior to the request for licensing by the board for licensing health care facilities.

(2) For new nursing homes, the ten (10) bed or ten percent (10%) increase cannot be requested until one (1) year after the date all of the new beds were initially licensed.

(3) When determining projected county nursing home bed need for certificate of need applications, all notices filed with the agency pursuant to § 68-11-1607(k)(1) with written confirmation from the board of licensing health care facilities that a request and application for license has been received and a review has been scheduled, shall be considered with the total of licensed nursing home beds plus the number of beds from approved certificates of need, but yet unlicensed.

(4) During such time as the provisions of § 68-11-1622 shall apply, the provisions of § 68-11-1607(k) shall be suspended.

Section 68-11-1608. (a) The departments of health and mental health and developmental disabilities shall review each application whose subject matter or funding is within their respective jurisdictions according to the process described in the rules of the health services and development agency. At a minimum, the reports shall provide:

(1) Verification of applicant-submitted information;

(2) Documentation or source for data;

(3) A review of the applicant's participation or non-participation in TennCare or its successor;

(4) Analyses of the impact of a proposed project on the utilization of existing providers and the financial consequences to existing providers from any loss of utilization that would result from the proposed project;

(5) Specific determinations as to whether a proposed project is consistent with the state health plan; and

(6) Further studies and inquiries necessary to evaluate the application pursuant to the rules of the agency.

(b) Upon request by interested parties or at the direction of the executive director, the staff of the agency shall conduct a fact-finding public hearing on the application in the area in which the project is to be located.

(c) Reviewing agencies shall have no more than sixty (60) days from the agency notice required by this part to file its written report with the agency. A copy of the evaluation made by the department shall be forwarded to the applicant, and to the agency, and shall be made available to others upon their request.

(d) The executive director may establish a date of less than sixty (60) days for reports on applications that are to be considered for a consent or emergency calendar established in accordance with agency rule. Any such rule shall provide that in order to qualify for the consent calendar, an application must not be opposed by any person with legal standing to oppose and the application must appear to meet the established criteria for the issuance of a certificate of need. If opposition is stated in writing prior to the application being formally considered by the agency, it will be taken off the consent calendar and placed on the next regular agenda, unless waived by the parties.

Section 68-11-1609. (a) The agency shall, upon consideration of an application and review of the evaluation and other relevant information thereon:

(1) Approve part or all of the application and grant a certificate of need for the same, upon any lawful conditions that the agency deems appropriate and enforceable on the grounds that those parts of the proposal appear to meet applicable criteria.

(A) Any such condition or conditions which are placed on a certificate of need, and which appear on the face of the certificate of need when issued shall also be made condition or conditions of any corresponding license issued, by the departments of health or mental health and developmental disabilities. Notwithstanding any provision of law to the contrary, any such conditions survive the expiration of the certificate of need, and remain effective until removed or modified by the agency. Such conditions shall become a requirement of licensure and shall be enforced by the respective licensing entity.

(B) The holder of a license or certificate of need which has a condition placed upon it by the agency may subsequently request that the condition be removed or modified, for good cause shown. The agency will consider the request and determine whether or not to remove or modify the condition. The procedure for requesting such a determination will be as provided by agency rules. If the holder of the license or certificate of need is aggrieved by the agency's decision, it may request a contested case hearing as permitted by this part.

(2) Disapprove part or all of the application and deny a certificate of need for the same on the grounds that the applicant has not affirmatively demonstrated that those parts of the proposal meet the applicable aforementioned criteria.

(3) Defer decisions for no more than ninety (90) days to obtain a clarification of information concerning applications properly before the agency if there are no simultaneous review applications being concurrently considered by the agency with the deferred application.

(b) No certificate of need shall be granted unless the action proposed in the application is necessary to provide needed health care in the area to be served, can be economically accomplished and maintained, and will contribute to the orderly development of adequate and effective health care facilities and/or services. In making such determinations, the agency shall apply the goals, objectives, criteria and standards in the state health plan, developed in accordance with § 68-11-1625. Additional criteria for review of applications shall also be prescribed by the rules of the agency. Notwithstanding any other provision of this subsection, when considering applications for new nursing home beds from the one hundred twenty-five bed medicare skilled nursing facility bed pool authorized in § 68-11-1622, the agency shall apply the criteria in this subsection. All other applications for new nursing home beds shall be governed solely by the provisions of § 68-11-1621. During the period of July 1, 2002 to June 30, 2003, the agency shall issue no certificates of need for new nursing home beds other than the one hundred twenty-five (125) medicare SNF beds authorized in § 68-11-1622.

(c) A certificate of need is valid for a period not to exceed three (3) years (for hospital projects) and two (2) years (for all other projects) from the date of its issuance and after such time shall expire; provided, that the agency may, in granting the certificate of need, allow longer periods of validity for certificates of need for good cause shown. Subsequent to granting the certificate of need, the agency may extend a certificate of need for a period upon application and good cause shown, accompanied by a nonrefundable reasonable filing fee, as prescribed by rule. An extension cannot be issued to any applicant unless substantial progress has been demonstrated. A certificate of need which has been extended shall expire at the end of the extended time period. The decision whether to grant such an extension is within the sole discretion of the agency, and is not subject to review, reconsideration, or appeal.

(d) A certificate of need which has expired is null and void, and of no effect. No revocation proceeding is required. No license or occupancy approval can be issued by the department of health or the department of mental health and developmental disabilities for any activity for which a certificate of need has become null and void.

(e) The agency's decision to approve or deny an application shall be final and shall not be reconsidered after the adjournment of the meeting in which the matter was considered. This provision does not limit the right to file a petition for a contested case hearing pursuant to § 68-11-1610, nor does it limit the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, pertaining to contested case hearings.

(f) Written notice of the decision of the agency approving, disapproving, or deferring an application, or parts thereof, shall be transmitted to the applicant, simultaneous review applicants, the department of health, the department of mental health and developmental disabilities, and others upon request.

(g)(1) Subject to subdivision (g)(2), any health care institution wishing to oppose a certificate of need application must file a written objection with the agency and serve a copy on the contact person for the applicant, not later than fifteen (15) days before the agency meeting at which the application is originally scheduled. An application for which the agency has received opposition shall be designated on the agency's agenda as an opposed application.

(2) A health care institution or other person may appear before the agency and express opposition to an application without complying with the requirements of subdivision (1); provided, that if a health care institution does not provide notice of its opposition as required by subdivision (1), and if such health care institution initiates a contested case pursuant to § 68-11-1610, then such health care institution shall be solely responsible for the agency's costs of the contested case proceeding and shall reimburse to the applicant the filing fee paid by the applicant, notwithstanding any other provision of law. Noncompliance with subdivision (1) shall not preclude a health care institution from intervening in a contested case proceeding initiated by the applicant.

Section 68-11-1610. (a) Within fifteen (15) days of the approval or denial by the agency of an application, any applicant, health care institution which filed a written objection in accordance with § 68-11-1609(g)(1), or any other person who objected to the application pursuant to § 68-11-1609 (g)(2), may petition the agency in writing for a hearing. Such petition shall be filed with the executive director. Notwithstanding any other provision of the law, all persons are barred from filing any petition for contested case hearing after such fifteen-day (15) period, and the agency shall have no jurisdiction to consider any late-filed petition. Upon receipt of a timely petition, the agency shall initiate a contested case proceeding as provided herein. At the hearing, no issue may be raised or evidence considered concerning the merits of an applicant considered by simultaneous review, unless the applicant met the requirements of this part of concurrent consideration with the application, which is the subject of the hearing.

(b) The contested case hearing required by this section shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, chapter 5, except as otherwise provided in this section.

(c) Contested cases initiated pursuant to this section shall be heard by an administrative law judge sitting alone. Petitions for contested cases received by the agency shall be forwarded immediately to the administrative division of the secretary of state's office for assignment to an administrative law judge.

(d) The administrative law judge to whom a case has been assigned shall convene the parties for a scheduling conference within fifteen (15) days of the date the petition for contested case is filed. At the scheduling conference, the parties shall state their respective positions on the arbitration and mediation alternatives described in this section below. If the parties are unable to agree on either the arbitration or mediation alternative, the scheduling order for the contested case adopted by the administrative law judge shall establish a schedule that results in a hearing completed within one hundred eighty (180) days of the date on which the petition for contested case was received by the agency, with the initial order to be entered within sixty (60) days of the date the hearing is completed. Extensions of time or variances from the scheduling order shall be granted sparingly, and only because of unforeseen developments that would cause substantial prejudice to a party.

(e) Initial orders of the administrative law judge in contested cases shall be reviewable upon request by the agency in accordance with the Uniform Administrative Procedures Act.

(f)(1) As an alternative to a contested case heard by an administrative law judge sitting alone, a contested case convened pursuant to this section may be decided through an arbitration process, as described herein, if all parties agree to such arbitration process.

(2) If the parties elect the arbitration process, an arbitrator shall be designated by mutual agreement of the parties, or in the event the parties cannot agree on an arbitrator, the administrative law judge to which the case is assigned shall designate an arbitrator from a list provided by the agency staff. The arbitrator shall have no personal or business relationships with any of the parties that would require recusal under the code of judicial conduct.

(3) The scheduling order requirements set forth in (c)(2) above shall not apply to arbitration proceedings conducted pursuant to this subsection.

(4) The administrative law judge shall remain assigned to the arbitration proceeding and shall rule on all matters relative to discovery, procedures and questions of law. At the arbitration hearing, the administrative law judge shall preside in the same manner as if the administrative law judge were sitting with an agency in a contested case.

(5) The arbitrator, in his or her discretion, may develop requests for documents or data to be submitted by the parties under oath. The administrative law judge shall enforce compliance with such requests.

(6) The findings of the arbitrator shall constitute the initial order in the case, unless the administrative law judge determines that the findings are based on a mistake or are unsupported by credible evidence. In the event the administrative law judge rejects the arbitrator's findings, the administrative law judge shall adopt a substitute initial order.

(7) The initial order in an arbitration proceeding shall be reviewed by the agency in accordance with the Uniform Administrative Procedures Act.

(f) As an additional alternative to the contested case process described in (c) above, the parties may agree to mediation of the issues raised in the contested case. The mediator shall be designated by mutual agreement of the parties. The parties may designate a mediator who is not listed as a qualified Rule 31 mediator, but such mediator shall observe the standards of professional conduct set forth in Appendix A to Rule 31, to the extent applicable. The mediator's fee shall be shared equally among the parties, except the state shall not be required to contribute to payment of the mediator's fee. If mediation results in agreement of the parties, such agreement shall be memorialized in the order terminating the contested case. A mediation proceeding under this subsection shall not be subject to the scheduling order requirements set forth in (c)(2) above.

(g) The general assembly declares the policy of the state to be that certificate of need contested cases should be resolved through arbitration or mediation, and the parties to such proceedings are encouraged to pursue these alternatives.

(h) Judicial review of the agency's final order in a contested case shall be as provided by law.

(i) All costs of the contested case proceeding, including the administrative law judge's costs, the arbitrator's fee, if any, and deposition costs, including fees of expert witnesses, shall be assessed against the losing party in the contested case. If there is more than one losing party, the costs shall be divided equally among the losing parties. No costs shall be assessed against the agency.

(j) The provisions of this section shall govern all contested cases relative to approval or denial decisions by the agency. Contested cases initiated with respect to certificate of need decisions by the health facilities commission shall be conducted in accordance with the Uniform Administrative Procedures Act and not by this section.

Section 68-11-1611. The agency shall, at least annually, review progress on any project covered by an issued certificate of need, and may require a showing by the holder of such certificate of substantial and timely progress to implement the project, and if, in the opinion of the executive director, such progress is lacking, the executive director may present a petition for revocation of the certificate of need for the agency's consideration. The agency may revoke the certificate of need based upon a finding that the holder has not proceeded to implement the project in a timely manner.

Section 68-11-1612. (a) The agency, in addition to the powers and duties expressly granted by this part, is authorized and empowered to petition any circuit or chancery court having jurisdiction to enjoin any person who is performing any of the actions specified in this part without possessing a valid certificate of need for the same.

(b) Jurisdiction is conferred upon the circuit and the chancery courts of the state to hear and determine such causes as chancery causes, and to exercise full and complete jurisdiction in such injunctive proceedings.

Section 68-11-1613. The division of TennCare or its successor by the fifteenth of each month, shall submit to the chairs of the senate and house finance, ways and means committees a statement reflecting the estimated impact on future state appropriations and/or expenditures of applications approved by the agency the preceding month.

Section 68-11-1614. (a) The commissioners of health and mental health and developmental disabilities shall establish policies and procedures to ensure independent review and verification of information submitted to the agency in applications, presentations, or otherwise.

(b) The purpose of such independent review and verification shall be to ensure that such information is accurate, complete, comprehensive, timely, and relevant to the decision to be made by the agency.

(c) The policies and procedures shall include, but not necessarily be limited to:

(1) Independent review and verification of such applicant-provided information as to the number of available beds within a region, occupancy rates, the number of individuals on waiting lists, the demographics of a region, the number of procedures, as well as any other critical information submitted or requested concerning an application;

(2) Staff examinations of data sources, data input, data processing, and data output, as well as verification of critical information through review procedures to include one (1) or more of the following:

(A) Analytical review;

(B) Tests for information on a sample basis by tracing facts to sources;

(C) Tests of all information provided, if necessary;

(D) Critical assessment of data sources, including the appropriateness of the sources; and

(E) Examination of the basis for projections of need, costs and available health services.

Section 68-11-1615. The commissioners of health and mental health and developmental disabilities shall establish policies and procedures to ensure independent review and verification of information submitted by health care providers for inclusion in the joint annual report.

Section 68-11-1616 Each decision rendered by the health services and development agency shall include written documentation and explanation of the factual and legal basis upon which the agency grants or denies the certificate of need.

Section 68-11-1617. (a) The agency has the power and authority, after notice and an opportunity for a hearing, to impose a civil monetary penalty against any person who performs, offers to perform, or holds such person out as performing any activity for which a certificate of need is required, without first obtaining a valid certificate of need.

(b) A civil penalty proceeding shall be initiated by the executive director of the agency with the filing a petition with the agency. The proceeding will be conducted as a contested case hearing in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3. The agency will first determine whether the person is performing, offering to perform, or holding such person out as performing any activity for which a certificate of need is required, without having first obtained a valid certificate of need. If the agency finds such a violation, the agency may impose a civil penalty, which shall begin running prospectively on the effective date of the final order as defined below in this section.

(c) The civil penalty shall be in an amount not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) per day of continued activity or operation, after the effective date of the final order. Notwithstanding any provision of law to the contrary, the effective date of the final order shall be the thirty-first day following entry of the final order. Once a civil penalty has been imposed, the violator shall have the burden of submitting verifiable evidence satisfactory to the agency, that the violator has discontinued the activity for which the civil penalty was imposed. The penalty shall accrue from the effective date until such evidence of discontinuance is received at the agency office.

(d) If the violator does not appeal to chancery court pursuant to § 4-5-322, the penalty shall become due and payable on the sixty-first day following entry of the final order. If the violation continues, the amount of the civil penalty will continue to accrue, and the violator shall make monthly payments of the accrued amount to the agency.

(e) If an appeal is taken pursuant to § 4-5-322, the penalty shall be due and payable on the thirty-first day following entry of an order of the final appellate court ruling on the matter, if the penalty is upheld. If the violation continues during the pendency of the appeal, the amount of the penalty will continue to accrue. If the violator fails to pay the civil penalty when due, the agency may apply to the chancery court of Davidson County to have the penalty converted to a judgment, and seek execution of such judgment. In any such proceeding, the chancery court shall convert the civil penalty to a judgment unless the court finds the agency acted in the clear absence of any jurisdiction whatsoever.

(f) In determining whether to impose a civil penalty and the amount thereof, the agency may consider the following factors:

(1) The economic benefits gained from the activities in question. The agency does not have to show that the violator would not have been granted a certificate of need had one been sought;

(2) Whether the civil penalty and the amount thereof, will be a substantial economic deterrent to the violator and others;

(3) The circumstances leading to the violation, and whether the violator had notice that the activity was in violation of the certificate of need laws and/or agency regulations; and

(4) The financial resources of the violator, and the violator's ability to pay the penalty.

Section 68-11-1618. Notice must be made to the agency of change of ownership occurring within two (2) years of the date of the initial licensure of a health care institution. Such notice must be made within thirty (30) days of the change of ownership and must include documentation of the commitment from the subsequent owner to comply with all conditions placed on the original certificate of need, and on the license, pursuant to this part.

Section 68-11-1619. (a) In addition to any other grounds for revocation provided by other statutes, rule of law, or equity, the agency has the power to revoke a certificate of need whenever any of the following has occurred:

(1) The holder of a certificate of need has not made substantial and timely progress toward the completion of the project or acquisition of the equipment;

(2) The acquisition or project as described in the person's application has been changed or altered in such a manner as to significantly deviate from the acquisition or project approved by the agency when the certificate of need was granted;

(3) The decision to issue a certificate of need was based, in whole or in part, on information or data in the application which was false, incorrect, or misleading, whether intentional or not;

(4) The holder of the certificate of need has committed fraud in obtaining the certificate of need or has committed fraud upon the agency after the certificate of need was issued. For purposes of this section, "fraud" means any form of deceit, trickery, misrepresentation, or subterfuge, including, but not limited to, any of the following actions:

(A) Making a knowingly false statement, orally or in writing, in connection with a certificate of need application or project subject to the jurisdiction of the agency;

(B) Intentionally withholding or suppressing information which the person knows, or reasonably should know, is relevant to a certificate of need application or project subject to the jurisdiction of the agency;

(C) Altering, forging, or otherwise modifying, with fraudulent intent, any document submitted to the agency in connection with any certificate of need application or project subject to the jurisdiction of the agency; or

(5) The violation of any condition placed upon a certificate of need by the agency, prior to licensure by the department of health or department of mental health and developmental disabilities.

Section 68-11-1620. (a) Except as provided in this section, the transfer of a certificate of need shall render it and all rights thereunder null and void. As used in this section, "transfer" means:

(1) Any sale, assignment, lease, conveyance, purchase, grant, donation, gift or any other direct or indirect transfer of any nature whatsoever of a certificate of need; provided, that nothing herein shall prohibit the transfer of a certificate of need, other than a certificate of need for the establishment of a new health care institution, if the certificate of need is transferred as part of the transfer of ownership of an existing health care institution;

(2) With regard to a certificate of need for the establishment of a proposed new health care institution, a change of control of the entity prior to completion or licensing shall render the certificate of need and all rights thereunder null and void. "Change of control" means:

(A) In the case of a partnership, the termination of interest of a general partner;

(B) In the case of a limited liability company or limited liability partnership, a change in the composition of members or partners to the extent that the management or membership control is different than that described in the certificate of need application.

(C) In the case of a corporation, the termination of interest of a shareholder or shareholders controlling more than fifty percent (50%) of the outstanding voting stock of the corporation.

(D) Nothing in subdivision (a)(2) shall prohibit change of control as described herein if the agency determines, upon petition of the prospective owner or owners of the entity, that such prospective owner or owners demonstrate that they meet the criteria of economic feasibility, contribution of orderly development and the considerations of section § 68-11-1605.

(b) A certificate of need, and the rights thereunder, shall be null and void if it is the subject of a development contract or agreement to sell or lease the facility that was not fully disclosed in the application.

Section 68-11-1621. (a) Notwithstanding the provisions of the state health plan or any regulation of the agency, the provisions of this section establish the criteria for issuance of certificates of need for new nursing home beds regardless of site (including conversion of any beds to licensed nursing home beds). The agency is authorized to grant a certificate of need only if the applicant meets all of the requirements of this section.

(b) The first criterion which must be met is the need for the project:

(1) The need for nursing home beds shall be determined by applying the following population-based methodology:

County bed need = .0004 times population of the county thirty-five (35) years of age and under; plus,

0.01 x population age 65-74; plus,

0.04 x population age 75-84; plus,

0.15 x population age 85 and over.

When applying the foregoing bed need formula, the agency shall use the formula in effect at the time of initial consideration of an application rather than a formula in effect at the time of application. County population statistics shall be based upon official statistics provided by the department of health.

(2) The need for nursing home beds shall be projected two (2) years into the future from the current year, and

(3) The actual bed need shall be derived by subtracting the projected bed need from a bed total comprised of the number of nursing home beds licensed in the county plus certificate of need approved, but yet unlicensed beds.

(c) The second criterion which must be met is economic feasibility:

(1) The application must show and the agency must find that the project will meet or exceed the following parameters:

(A) A debt service coverage ratio greater than or equal to 1.25 by the end of the second year of projection. Debt service coverage ratio is net income before depreciation and interest expense divided by the annual debt service;

(B) A current ratio greater than or equal to 1.25 by the end of the second year of projections. Current ratio is current assets divided by current liabilities;

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(C) Day's cash on hand greater than or equal to fifteen (15) days at the end of each year of projection. Day's cash on hand is cash plus equivalents divided by net operating expenses per day minus depreciation per day; and

(D) Long term debt as a percent of total capital less than or equal to ninety percent (90%). Long term debt as a percent of total capital is long term debt divided by long term debt plus shareholders' equity or fund balance; and

(2) The applicant must show and the agency must evaluate the project with reference to:

(A) Whether sufficient financial resources are available to implement and operate the project including levels of patient charges and proof of potential capital financing;

(B) The long range amortization of the project plus any cost associated with the original building if the proposed project is an addition or conversion of current space;

(C) A comparison of the cost of similar projects, including any construction costs, during the preceding year; and

(D) Projection of total costs over expected life of facility.

(d) When considering simultaneous review of two (2) or more applications for nursing home beds in the same county the agency shall consider the following criteria in addition to need and economic feasibility:

(1) Any unique qualities or characteristics the application exhibits that distinguish it from other nursing homes, in the form of clientele served or services offered;

(2) The extent to which each project proposes to meet any unmet needs of the area's population; and

(3) The comparative costs of the projects. In simultaneous review applications the focus shall be more on comparing the cost to the patient or payment source than a comparison of per bed or per square foot costs.

(e) The agency shall not approve the settlement of an appeal of the denial or issuance of a certificate of need if such settlement approves a project which does not meet the requirements of this section.

Section 68-11-1622. (a) During the fiscal year July 1, 2002 to June 30, 2003, the agency shall issue no certificates of need for new nursing home beds, including the conversion of hospital beds to nursing home beds or swing beds, other than one hundred twenty-five (125) beds per fiscal year, to be certified as medicare skilled nursing facility (SNF) beds as authorized in this section.

(b) The number of medicare SNF beds issued under this subsection shall not exceed thirty (30) for each applicant. The applicant shall specify in the application the skilled services to be provided and how the applicant intends to provide such skilled services. In reviewing applications, the agency shall consider the application without regard as to whether the applicant currently has medicare SNF beds. Applications for medicare SNF beds under this subsection shall be reviewed by the department and considered by the agency pursuant to § 68-11-1609, rather than § 68-11-1621. If the pool of one hundred twenty-five (125) medicare SNF beds created by this subsection is not depleted prior to June 30 of the fiscal year, the beds remaining in such pool shall be considered to be available to applicants who apply before June 30 of each fiscal year, even though review may occur after June 30 of that year.

Section 68-11-1623. All fees authorized by this part shall be maintained in a separate account administered by the health services and development agency. Fees include, but are not limited to, fees for the application of certificates of need, subscriptions, project cost-overruns, copying and contested cases. The account is established for the purpose of providing support for the implementation of the certificate of need program, data collection and the administration of the agency. It is the intent of the general assembly that the funds in this account shall not revert to the state general fund, but shall instead be carried forward for the purpose for which they were originally intended. It is also the intent of the general assembly that any accumulated revenues in excess of expenditures of the health facilities commission upon the date the health facilities commission ceases to exist shall be deposited in the agency account as created by this part for the administration of the certificate of need program. Furthermore, it is the intent of the general assembly that funds allocated for the fiscal year 2001-2002 for the health facilities commission shall fund the health services and development agency for the remainder of that same fiscal year. The executive director shall prepare a budget for submission and approval of the general assembly for each fiscal year thereafter.

Section 68-11-1624. At a hearing conducted by the agency for a nonresidential methadone treatment facility, if a local governing body requests to participate in such hearing, the officials of such governing body shall have the opportunity to appear before the agency and express support and/or opposition to the granting of a certificate of need to the applicant. The testimony of such officials shall be informational and advisory to the agency and the support of the local governing body shall not be a requirement for the granting of a certificate of need by the agency.

Section 68-11-1625. (a) (1) There is created a state health planning and advisory board composed of thirty-four (34) members. Twenty-four (24) members shall be appointed by the governor, three (3) appointed by the speaker of the senate, and three (3) appointed by the speaker of the house of representatives. The commissioners of the departments of health and mental health and developmental and disabilities shall serve as ex officio voting members. The chairmen of the finance, ways and means committees of the senate and the house of representatives shall serve as ex officio voting members. The members appointed by the governor shall be composed as follows:

(A) One (1) member from a medical school located in Tennessee;

(B) One(1) member who is a physician/surgeon as recommended by the Tennessee medical association or other similar major statewide association;

(C) One (1) member who is a registered nurse as recommended by the Tennessee nurses association or other similar major statewide association;

(D) One (1) member representing county governments as recommended by the Tennessee county services association or other similar major statewide association;

(E) One (1) member representing municipal governments as recommended by the Tennessee municipal league or other similar major statewide association;

(F) One (1) member representing rural hospitals as recommended by the Tennessee hospital association or other similar major statewide association;

(G) One (1) member representing government owned hospitals as recommended by the Tennessee hospital association or other similar major statewide association;

(H) One (1) member representing public and teaching hospitals as recommended by the Tennessee hospital association or other similar major statewide association;

(I) One (1) member representing urban hospitals as recommended by the Tennessee hospital association or other similar major statewide association;

(J) One (1) member representing rural nursing homes as recommended by the Tennessee health care association or other similar major statewide association;

(K) One (1) member who is a primary care physician as recommended by the Tennessee medical association or other similar major statewide association;

(L) One (1) member representing the private insurance industry as recommended by the Tennessee farm bureau federation or other similar major statewide association;

(M) One (1) member representing urban nursing homes as recommended by the Tennessee health care association or other similar major statewide association;

(N) One (1) member representing home health agencies as recommended by the Tennessee association of home care or other similar major statewide association;

(O) One (1) member representing hospices as recommended by the Tennessee association of home care or other similar major statewide association;

(P) One (1) member representing small businesses as recommended by the Tennessee chapter for the national federation of independent business or other similar major statewide association;

(Q) One (1) member representing organizations for the population over the age of sixty-five (65) years as recommended by the AARP or other similar major statewide association;

(R) One (1) member representing providers of mental health services as recommended by the Tennessee association of mental health organizations or other similar major statewide association;

(S) One (1) member representing the providers of developmental disability services as recommended by the Tennessee disability association or other similar major statewide association;

(T) One (1) member representing the state insurance committee;

(U) One (1) member representing labor as recommended by the Tennessee AFL-CIO labor council or other similar major statewide association;

(V) One (1) member representing organizations for indigent and underserved populations as recommended by the Tennessee justice center;

(W) One (1) member representing a businesses with more than one hundred fifty (150) employees as recommended by the Tennessee association of business or other similar major statewide association; and

(X) One (1) member recommended by the volunteer state medical association.

(2) The terms of the appointments shall be three (3) years. The terms shall be staggered so that the initial term for the first eight (8) members shall be one (1) year; the initial term for the second eight (8) members shall be two (2) years; and the term for the remaining eight (8) members shall be three (3) years. The speakers shall make their initial appointments designating one for a term of one (1) year, one for a term of two (2) years and one for a term of three (3) years. Following the initial terms, all terms shall be three (3) years. No member shall serve more than two consecutive, three-year terms.

(3) In making appointments to the state health planning and advisory board, the governor and the speakers shall strive to ensure that racial minorities, females, and persons sixty (60) years of age are represented.

(4) The members appointed by the speakers shall be persons who are knowledgeable of health needs and services and representative of the consumers of health care in Tennessee. The members shall not be a direct provider of health care goods or services.

(5) Members of the board shall be subject to removal by the governor or the speakers accordingly for neglect of duty or failure to attend at least 75% of the meetings of the board in any year. Vacancies shall be filled by the governor or speakers as appropriate.

(6) The member representing a medical school located in Tennessee shall serve as chairperson.

(7) Twenty-two (22) members shall constitute a quorum. The members shall elect a vice-chairman at the first meeting of the fiscal year.

(8) Members of the board that are not employed by the state will not be paid for their service. Each member will be reimbursed for travel expenses in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration.

(9) A separate account is authorized to provide support for the state health planning and advisory board. The following schedule of fees from healthcare providers shall be collected annually and administered by the health services and development agency. The account shall be used for the services required to fulfill the duties of the state health planning and advisory board. All planning staff shall be hired by and under the direction of the executive director of the health services and development agency. The following schedule shall apply:

(A) Residential hospice---\$100 per license;

(B) Nursing homes---\$100 per license;

(C) Hospitals 1-100 beds---\$100 per license;

(D) Hospitals 101-200 beds---\$200 per license;

(E) Hospitals 201+ beds---\$300 per license

(F) Ambulatory surgical treatment centers---\$100 per license;

(G) Outpatient diagnostic centers---\$100 per center

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- (H) Home care organizations---\$100 per license;
- (I) Homes for the aged---\$50 per license
- (J) Birthing centers---\$50 per license
- (K) Assisted living facilities---\$100 per license;
- (L) Alcohol and drug facilities (including non-residential methadone treatment facilities)---\$75 per license;
- (M) Mental health hospitals 1-100 beds---\$100 per license;
- (N) Mental health hospitals 101+ beds---\$200 per license;
- (O) Mental health residential treatment facilities---\$100 per license; and
- (P) Mental retardation institutional habilitation facilities---\$100 per license.

(b) It is the purpose of the board to develop a state health plan that is evaluated and updated at least annually. The plan shall guide the state in the development of health care programs and policies, and the allocation of health care resources in the state.

(c) It is the policy of the state of Tennessee that every citizen have reasonable access to emergent and primary care; that the state's health care resources are developed to address the needs of Tennesseans while encouraging competitive markets, economic efficiencies and the continued development of the state's health care industry; that every citizen can have confidence that the quality of health care is continually monitored and standards are adhered to by health care providers and that the state supports the recruitment and retention of a sufficient and quality health care workforce.

(d) The board shall be staffed administratively by the agency until such time that the agency has developed a planning and data resources staff. The agency staff shall coordinate the agendas and request the assistance of other agencies such as the departments of health and mental health and developmental disabilities to assist in the areas and programs under their jurisdiction by providing testimony, data and reports.

(e) The duties and responsibilities of the board include:

- (1) To develop and adopt a state health plan;
- (2) To submit the plan to the health services and development agency for comment;
- (3) To submit the state health plan to the governor for his approval and adoption;

- (4) To hold public hearings as needed;
- (5) To review and evaluate the plan at least annually;
- (6) To respond to requests for comment and recommendations for health care policies and programs;
- (7) To conduct an ongoing evaluation of Tennessee's resources for accessibility, including but not limited to financial, geographic, cultural, and quality of care;
- (8) To review the health status of Tennesseans as presented annually to the board by the department of health and the department of mental health and developmental disabilities;
- (9) To review and comment on federal laws and regulations that influence the health care industry and the health care needs of Tennesseans;
- (10) To involve and coordinate functions with such state entities as necessary to ensure the coordination of state health policies and programs in the State;
- (11) To prepare an annual report for the general assembly and recommend legislation for their consideration and study; and
- (12) To establish a process for timely modification of the state health plan in response to changes in technology, reimbursement and other developments that affect the delivery of health care.

(f) At the first meeting of the board, the members shall review current criteria and standards developed by the health planning commission in 2001, and adopt the criteria and standards as guidance for the issuance of certificates of need until such time as a new state health plan is developed. The board may make subsequent changes to the criteria and standards pending development of the new state health plan.

Section 68-11-1626. After appointment of the health services and development agency members pursuant to this part, such members shall meet as soon as practicable for organizational and other purposes. It is the intent of the general assembly that the agency shall be fully and solely responsible for administration of the certificate of need process on July 1, 2002. Jurisdiction of the agency over the certificate of need process shall be effective simultaneously with the cessation of the health facilities commission, and there shall be no period in which a certificate of need is not required for the actions set forth in § 68-11-1607.

SECTION 5. The rules and regulations promulgated by the health facilities commission as of the effective date of this act shall remain in effect and become the rules and regulations of the health services and development agency until the agency promulgates new rules and regulations; provided, however, those rules and regulations of the health facilities commission contrary to this act shall be null and void as of July 1, 2002.

SECTION 6. This act shall not affect rights and duties that matured, penalties that were incurred or proceedings that were begun before its effective date by the agency existing prior to the effective date. It is the intent of the general assembly that all pending applications, contested cases and other matters proceed without interruption during the transition of authority between the health facilities commission and the health services and development agency. After the health facilities commission ceases to exist, the health services and development agency shall succeed to all the rights, powers and interests relative to such applications, contested cases and other matters. All rights and conditions assigned to existing certificates of need shall continue.

SECTION 7. (a) It is the intent of the general assembly that all property assigned to the health facilities commission be transferred to the health services and development agency. The agency shall have full authority over all administrative and budget processes transferred to the agency from the health facilities commission.

(b) Recognizing the years of faithful and dedicated service to the state of Tennessee by the employees of the health facilities commission, it is the intention of the general assembly that those employees who serve in jobs that would be classified as career service, as defined in § 8-30-208, receive the benefits and protection of career service status upon passage of this act without further examination or competition, provided that such employees must have completed at least six (6) months of service with the health facilities commission upon the effective date of this act.

(c) In addition to the designations of career service and executive service in § 8-30-208, the following shall be included in the executive service:

(1) The executive director of the agency; and

(2) Any attorneys employed by the agency.

(d) The executive director shall be appointed by the agency in accordance with § 68-11-1606 at the first meeting of the agency and serve as the appointing authority for the agency. All other executive service staff shall serve at the pleasure of the appointing authority. During the time period between the effective date of this act and the appointment by the agency of an executive director, the executive director of the health facilities commission shall serve as the interim executive director with oversight and consultation by the comptroller of the treasury. The interim director shall have all the responsibilities, powers and duties delegated to the executive director of the agency by this act.

SECTION 8. If any provision of this act of the application of it to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 9. The act shall take effect upon becoming law the public welfare requiring it.

/s/ Senator Thelma Harper	Representative Joe Armstrong
Senator Joe Haynes	Representative Mike Kernell
Senator Crutchfield	Representative Randy Rinks
Senator Ben Atchley	Representative Ralph Cole
Senator Bill Clabough	Representative Joe Kent

Rep. Armstrong moved that the Report of the Conference Committee on **Senate Bill No. 93** be adopted and made the action of the House, which motion prevailed by the following vote:

Ayes	94
Noes	0
Present and not voting	2

Representatives voting aye were: Armstrong, Arriola, Baird, Beavers, Bittle, Black, Bone, Bowers, Boyer, Briley, Brown, Buck, Bunch, Buttry, Caldwell, Casada, Chumney, Cole (Carter), Cole (Dyer), Cooper, Curtiss, Davidson, Davis (Washington), Davis (Cocke), DeBerry J, Dunn, Ferguson, Fitzhugh, Ford, Fowlkes, Fraley, Garrett, Givens, Godsey, Goins, Hagood, Hargett, Hargrove, Harwell, Head, Hood, Johnson, Jones U, Kent, Kernell, Kisber, Langster, Lewis, Maddox, McCord, McDaniel, McDonald, McKee, McMillan, Miller, Montgomery, Mumpower, Newton, Odom, Overbey, Patton, Phelan, Phillips, Pinion, Pleasant, Pruitt, Rhinehart, Ridgeway, Rinks, Roach, Rowland, Sands, Scroggs, Sharp, Shaw, Shepard, Stanley, Tidwell, Tindell, Todd, Towns, Turner (Hamilton), Turner (Shelby), Turner (Davidson), Vincent, Walker, West, Westmoreland, White, Whitson, Windle, Winningham, Wood, Mr. Speaker Naifeh -- 94.

Representatives present and not voting were: Clem, Sargent -- 2.

A motion to reconsider was tabled.

HOUSE ACTION ON SENATE MESSAGE

Senate Bill No. 2596 -- Highway Signs - "James U.L. Scott Memorial Bridge", Roaring River on S.R. 53 in Jackson County, by *Burks, *Davis L. (*HB2377 by *Winningham, *White)

Rep. Winningham moved that the House refuse to recede from its action in adopting Amendment(s) No(s). 1 to **Senate Bill No. 2596**, which motion prevailed.

CONFERENCE COMMITTEE APPOINTED ON SENATE BILL NO. 2596

Pursuant to **Rule No. 73**, Representative Winningham moved that the Speaker appoint a Committee of the House to meet with a like Committee of the Senate to resolve the differences between the two bodies on Senate Bill No. 2596, which motion prevailed.

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The Speaker appointed Representatives Ridgeway, Winningham and Head as the House members of the Conference Committee on Senate Bill No. 2596.

HOUSE ACTION ON SENATE AMENDMENTS

House Bill No. 2984 -- Education - Provides for employment through RFP process of construction manager for school construction projects. Amends TCA Section 49-2-203. by *Ford S, *Patton, *Givens, *Boyer, *McDaniel, *Davidson. (*SB2432 by *Haun)

Senate Amendment No. 1

AMEND House Bill No. 2984 by deleting the period after the word "project" in the last sentence of the amendatory language of Section 1 of the printed bill and by adding the following:

, except in instances where bids have been solicited twice and no bids have been submitted. If the construction manager can document that a good faith effort was made in each bid solicitation to obtain bids and no bids were received, then the construction manager can perform the construction work at a price agreed upon by the construction manager, the architect and the owner of the project.

Rep. Ford moved that the House nonconcur in Senate Amendment(s) No(s). 1 to **House Bill No. 2984**, which motion prevailed.

HOUSE ACTION ON SENATE AMENDMENTS

House Bill No. 2476 -- Child Custody and Support - Defines joint physical and legal custody; requires showing of direct physical harm or significant emotional harm to child or parent to rebut presumption joint custody in best interest of child. Amends TCA Title 36, Chapter 6, Part 1. by *Patton, *Fraleigh, *Odom, *DeBerry J, *Bowers, *West, *Kernell, *Bunch. (*SB2427 by *Haun, *Henry)

Senate Amendment No. 1

AMEND House Bill No. 2476 by deleting all of the language after the enacting clause and substituting therefor the following:

SECTION 1. Tennessee Code Annotated, Section 36-6-101(a), is amended by adding the following paragraphs to the end of subdivision (2):

If the issue before the court is a modification of the court's prior decree pertaining to custody or a residential parenting arrangement, then the petitioner must prove by a preponderance of the evidence a material change in circumstances. A "material change in circumstances" does not require a showing of a substantial risk of harm to the child. Nothing contained within the provisions of this subdivision shall interfere with the requirement that parties to an action for legal separation, annulment, absolute divorce or separate maintenance incorporate a parenting plan into the final decree or decree modifying an existing custody order.

SECTION 2. This act shall take effect upon becoming law, the public welfare requiring it.

Rep. Patton moved that the House nonconcur in Senate Amendment(s) No(s). 1 to **House Bill No. 2476**, which motion prevailed.

HOUSE ACTION ON SENATE AMENDMENTS

***House Bill No. 2258** -- Foster Care - Extends current relative caregiver program through 2004 and expands pilot program to include Knox and Hamilton counties. Amends TCA Section 71-3-136. by *Bowers. (SB2654 by *Dixon, *Henry)

Senate Amendment No. 1

AMEND House Bill No. 2258 By deleting the language "two (2) years" from the first sentence of the first unnumbered subsection of the amendatory language of Section 1 and by substituting instead the language "one (1) year".

AND FURTHER AMEND by deleting the following language from the amendatory language of Section 1:

() Subject to the availability of funding, the relative caregiver program shall be expanded to include Knox and Hamilton counties. The expanded programs shall follow the guidelines set in the current pilot program statutes and any regulations the department developed to implement the existing pilot programs.

Rep. Bowers moved that the House concur in Senate Amendment(s) No(s). 1 to **House Bill No. 2258**, which motion prevailed by the following vote:

Ayes98
Noes0

Representatives voting aye were: Armstrong, Arriola, Baird, Beavers, Bittle, Black, Bone, Bowers, Boyer, Briley, Brooks, Brown, Buck, Bunch, Buttry, Caldwell, Casada, Chumney, Clem, Cole (Carter), Cole (Dyer), Cooper, Curtiss, Davidson, Davis (Washington), Davis (Cocke), DeBerry J, DeBerry L, Dunn, Ferguson, Fitzhugh, Ford, Fowlkes, Fraley, Garrett, Givens, Godsey, Goins, Hagood, Hargett, Hargrove, Harwell, Head, Hood, Johnson, Jones U, Kent, Kernell, Kisber, Langster, Lewis, Maddox, McCord, McDaniel, McDonald, McKee, McMillan, Miller, Montgomery, Mumpower, Newton, Odom, Overbey, Patton, Phelan, Phillips, Pinion, Pleasant, Pruitt, Rhinehart, Ridgeway, Rinks, Roach, Rowland, Sands, Sargent, Scroggs, Sharp, Shaw, Shepard, Stanley, Tidwell, Tindell, Todd, Towns, Turner (Hamilton), Turner (Shelby), Turner (Davidson), Vincent, Walker, West, Westmoreland, White, Whitson, Windle, Winningham, Wood, Mr. Speaker Naifeh -- 98.

A motion to reconsider was tabled.

HOUSE ACTION ON SENATE AMENDMENTS

House Bill No. 2623 -- Law Enforcement - Requires peace officer standards and training commission to issue certificate of compliance to university security officer who meets qualifications for employment as police officer and who satisfactorily completes approved recruit training program. Amends TCA Title 38, Chapter 8, Part 1. by *Patton. (*SB2848 by *Burchett, *Crowe)

Senate Amendment No. 1

AMEND House Bill No. 2623 by deleting Section 1 in its entirety and by substituting instead the following as a new Section 1:

SECTION 1. Tennessee Code Annotated, Section 38-8-107, is amended by adding the following as a new subsection (d):

(d) The commission shall also issue a certificate of compliance to any person employed as a security officer pursuant to §49-7-118 provided such person meets the qualifications for employment as a police officer and satisfactorily completes an approved recruit training program as required by this part. To retain such certification, the security officer shall also successfully complete an annual in-service training session appropriate for the officer's rank and responsibilities.

Rep. Patton moved that the House concur in Senate Amendment(s) No(s). 1 to **House Bill No. 2623**, which motion prevailed by the following vote:

Ayes98
Noes0

Representatives voting aye were: Armstrong, Arriola, Baird, Beavers, Bittle, Black, Bone, Bowers, Boyer, Briley, Brooks, Brown, Buck, Bunch, Buttry, Caldwell, Casada, Chumney, Clem, Cole (Carter), Cole (Dyer), Cooper, Curtiss, Davidson, Davis (Washington), Davis (Cocke), DeBerry J, DeBerry L, Dunn, Ferguson, Fitzhugh, Ford, Fowlkes, Fraley, Garrett, Givens, Godsey, Goins, Hagood, Hargett, Hargrove, Harwell, Head, Hood, Johnson, Jones U, Kent, Kernell, Kisber, Langster, Lewis, Maddox, McCord, McDaniel, McDonald, McKee, McMillan, Miller, Montgomery, Mumpower, Newton, Odom, Overbey, Patton, Phelan, Phillips, Pinion, Pleasant, Pruitt, Rhinehart, Ridgeway, Rinks, Roach, Rowland, Sands, Sargent, Scroggs, Sharp, Shaw, Shepard, Stanley, Tidwell, Todd, Towns, Turner (Hamilton), Turner (Shelby), Turner (Davidson), Vincent, Walker, West, Westmoreland, White, Whitson, Windle, Winningham, Wood, Mr. Speaker Naifeh -- 98.

A motion to reconsider was tabled.

HOUSE ACTION ON SENATE AMENDMENTS

***House Bill No. 1434** -- Highways, Roads and Bridges - Clarifies that department of transportation has authority but does not have duty to remove all personal property encroachments from right-of-way of highways. Amends TCA Title 4, Title 7, Title 9, Title 10, Title 11, Title 12, Title 13, Title 20, Title 29, Title 42, Title 54, Title 55, Title 62, Title 65, Title 66, Title 67, Title 68, and Title 69. by *Sands, *McDaniel, *Fowlkes, *Jones U (Shelby). (SB1712 by *Clabough)

Senate Amendment No. 3

AMEND House Bill No. 1434 by adding the following new section immediately preceding the last section and by renumbering the subsequent section accordingly:

SECTION _____. Tennessee Code Annotated, Section 20-4-101, is amended by deleting the period "." at the end of subsection (c) and by adding the following:

; nor shall the action be required to be brought in the county where the cause of action arose if a material defendant resides in that county, nor other court decision notwithstanding.

Rep. Sands moved that the House nonconcur in Senate Amendment(s) No(s). 3 to **House Bill No. 1434**, which motion prevailed.

HOUSE ACTION ON SENATE AMENDMENTS

House Bill No. 2693 -- Mobile Homes and Manufactured Buildings - Increases to 14' 2" from 13' 6" height of manufactured home requiring special routing for movement; increases to 12 months from 6 days period in which special permit for movement is valid. Amends TCA Title 55. by *Head, *Rinks, *White, *Ridgeway, *Newton. (*SB2399 by *Haun)

Senate Amendment No. 1

AMEND House Bill No. 2693 By deleting subsection (d) of amendatory § 55-4-412 of Section 12 of the bill as amended and by substituting instead the following:

(d) This part may be enforced by the department of safety or local law enforcement agencies. Whenever a person is arrested for any violation of this part, the arresting officer may issue a traffic citation to such person in lieu of arrest, continued custody and the taking of the arrested person before a magistrate in accordance with § 55-10-207(a)(3).

AND FURTHER AMEND By adding the following language as new, appropriately designated sections immediately preceding the final section of the bill as amended:

SECTION ___. Tennessee Code Annotated, Section 55-10-207(a), as amended by Chapter 648 of the Public Acts of 2002, is amended by adding the following language as a new, appropriately designated subdivision:

(3) Whenever a person is arrested for a violation of any provision of chapter 4, part 4 of this title that is punishable as a misdemeanor, the arresting officer may issue a traffic citation to such person in lieu of arrest, continued custody and the taking of the arrested person before a magistrate.

SECTION ____ Tennessee Code Annotated, Section 55-10-207(d), as amended by Chapter 648 of the Public Acts of 2002, is amended by deleting the language "§ 55-12-139." and by substituting instead the language "§ 55-12-139 or chapter 4, part 4 of this title."

Rep. Head moved that the House concur in Senate Amendment(s) No(s). 1 to **House Bill No. 2693**, which motion prevailed by the following vote:

Ayes	97
Noes	0
Present and not voting	1

Representatives voting aye were: Armstrong, Arriola, Baird, Beavers, Bittle, Black, Bone, Bowers, Boyer, Briley, Brooks, Brown, Buck, Bunch, Buttry, Caldwell, Casada, Chumney, Clem, Cole (Carter), Cole (Dyer), Cooper, Curtiss, Davidson, Davis (Washington), Davis (Cocke), DeBerry J, DeBerry L, Dunn, Ferguson, Fitzhugh, Ford, Fowlkes, Fraley, Garrett, Givens, Godsey, Goins, Hagood, Hargett, Hargrove, Head, Hood, Johnson, Jones U, Kent, Kernell, Kisber, Langster, Lewis, Maddox, McCord, McDaniel, McDonald, McKee, McMillan, Miller, Montgomery, Mumpower, Newton, Odom, Overbey, Patton, Phelan, Phillips, Pinion, Pleasant, Pruitt, Rhinehart, Ridgeway, Rinks, Roach, Rowland, Sands, Sargent, Scroggs, Sharp, Shaw, Shepard, Stanley, Tidwell, Tindell, Todd, Towns, Turner (Hamilton), Turner (Shelby), Turner (Davidson), Vincent, Walker, West, Westmoreland, White, Whitson, Windle, Winningham, Wood, Mr. Speaker Naifeh -- 97.

Representatives present and not voting were: Harwell -- 1.

A motion to reconsider was tabled.

UNFINISHED BUSINESS

INTRODUCTION OF BILLS

On motion of Rep. Davidson, the following bills were introduced and passed first consideration:

House Bill No. 3290 -- Tipton County - Subject to local approval, abolishes Tipton County Public Works Committee and creates Department of Public Works for Tipton County, subject to requirements of Tennessee County Uniform Highway Law. - Repeals Chapter 114 of the Private Acts of 1973, as amended. by *Naifeh, *Fitzhugh.

House Bill No. 3291 -- Rutherford County - Subject to local approval, authorizes county highway commission and superintendent to work on public drainage easements. Amends Chapter 55 of the Private Acts of 1951; as amended. by *Hood.

RULES SUSPENDED

Rep. Hood moved that the rules be suspended for the purpose of introducing House Joint Resolution No. 1111 out of order, which motion prevailed.

House Joint Resolution No. 1111 -- Memorials, Recognition - Standard Register Company in Murfreesboro. by *Hood, *Rowland, *Beavers.

On motion, the rules were suspended for the immediate consideration of the resolution.

On motion of Rep. Hood, the resolution was adopted.

A motion to reconsider was tabled.

INTRODUCTION OF BILLS

On motion of Rep. Davidson, the following bill was introduced and passed first consideration:

House Bill No. 3292 -- Macon County - Subject to local approval, authorizes levy of privilege tax on new land development. by *Buck, *Winningham.

RULES SUSPENDED

Rep. Davidson moved that the rules be suspended for the immediate consideration of Senate Joint Resolution No. 835 out of order, which motion prevailed.

Senate Joint Resolution No. 835 -- General Assembly, Recess & Reconvene - Recesses general assembly from close of business on Wednesday, May 22, 2002, to Wednesday, May 29, 2002. by *Crutchfield.

On motion of Rep. Davidson, and seconded by Rep. McDaniel, the resolution was concurred in.

A motion to reconsider was tabled.

SPONSORS ADDED

Under **Rule No. 43**, the following members were permitted to add their names as sponsors as indicated below, the prime sponsor of each having agreed to such addition:

House Joint Resolution No. 851: Rep(s). Bunch as prime sponsor(s).

House Bill No. 1617: Rep(s). Winningham as prime sponsor(s).

House Bill No. 2942: Rep(s). Boyer as prime sponsor(s).

SPONSORS REMOVED

On motion, Rep(s). McMillan was/were removed as sponsor(s) of **House Bill No. 1767**.

On motion, Rep(s). McDonald was/were removed as sponsor(s) of **House Bill No. 2942**.

ENROLLED BILLS

May 22, 2002

The following bills have been compared, enrolled, and are ready for the signature(s) of the Speaker(s): House Bill(s) No(s). 2484.

BETTY KAY FRANCIS, Chief Engrossing Clerk.

SIGNED

May 22, 2002

The Speaker signed the following: House Bill(s) No(s). 2484.

BETTY KAY FRANCIS, Chief Engrossing Clerk.

MESSAGE FROM THE SENATE

May 22, 2002

MR. SPEAKER: I am directed to return to the House, House Bill(s) No(s). 2484; signed by the Speaker.

RUSSELL A. HUMPHREY, Chief Clerk.

REPORT OF CHIEF ENGROSSING CLERK

May 22, 2002

The following bill(s) have been transmitted to the Governor for his action: House Bill(s) No(s). 2484.

BETTY KAY FRANCIS, Chief Engrossing Clerk.

ENGROSSED BILLS

May 22, 2002

The following bills have been examined, engrossed, and are ready for transmission to the Senate: House Bill(s) No(s). 2747, 3281, 3282, 3283, also, House Joint Resolution(s) No(s). 674, 735, 920 and 1041.

BETTY KAY FRANCIS, Chief Engrossing Clerk.

ENGROSSED BILLS

May 22, 2002

The following bill(s) have been examined, engrossed, and are ready for transmission to the Senate: House Bill(s) No(s). 247, 1139, 1210, 2479, 2617, 2650, 2840 and 3232.

BETTY KAY FRANCIS, Chief Engrossing Clerk.

ENGROSSED BILLS

May 22, 2002

The following bill(s) have been examined, engrossed, and are ready for transmission to the Senate: House Bill(s) No(s). 2067.

BETTY KAY FRANCIS, Chief Engrossing Clerk.

MESSAGE FROM THE SENATE

May 22, 2002

MR. SPEAKER: I am directed to return to the House, House Bill(s) No(s). 3267 and 3277; substituted for Senate Bill(s) on the same subject(s) and passed by the Senate.

RUSSELL A. HUMPHREY, Chief Clerk.

MESSAGE FROM THE SENATE

May 22, 2002

MR. SPEAKER: I am directed to return to the House, House Bill(s) No(s). 3148; substituted for Senate Bill(s) on the same subject(s) and passed by the Senate.

RUSSELL A. HUMPHREY, Chief Clerk.

MESSAGE FROM THE SENATE

May 22, 2002

MR. SPEAKER: I am directed to return to the House, House Bill(s) No(s). 1416; substituted for Senate Bill(s) on the same subject(s), amended and passed by the Senate.

RUSSELL A. HUMPHREY, Chief Clerk.

MESSAGE FROM THE SENATE

May 22, 2002

MR. SPEAKER: I am directed to return to the House, House Bill(s) No(s). 1106; substituted for Senate Bill(s) on the same subject(s), amended and passed by the Senate.

RUSSELL A. HUMPHREY, Chief Clerk.

MESSAGE FROM THE SENATE

May 22, 2002

MR. SPEAKER: I am directed to return to the House, House Bill(s) No(s). 2546, 2747, 2750 and 2889; substituted for Senate Bill(s) on the same subject(s) and passed by the Senate.

RUSSELL A. HUMPHREY, Chief Clerk.

MESSAGE FROM THE SENATE

May 22, 2002

MR. SPEAKER: I am directed to return to the House, House Bill(s) No(s). 2827; substituted for Senate Bill(s) on the same subject(s), amended and passed by the Senate.

RUSSELL A. HUMPHREY, Chief Clerk.

MESSAGE FROM THE SENATE

May 22, 2002

MR. SPEAKER: I am directed to return to the House, House Joint Resolution(s) No(s). 1038, 1039, 1040, 1042, 1043, 1044, 1045, 1046, 1047, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1077, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089 and 1090; all concurred in by the Senate.

RUSSELL A. HUMPHREY, Chief Clerk.

MESSAGE FROM THE SENATE

May 22, 2002

MR. SPEAKER: I am directed to return to the House, House Bill(s) No(s). 2672; substituted for Senate Bill(s) on the same subject(s), amended and passed by the Senate.

RUSSELL A. HUMPHREY, Chief Clerk.

MESSAGE FROM THE SENATE

May 22, 2002

MR. SPEAKER: I am directed to return to the House, House Bill(s) No(s). 102; substituted for Senate Bill(s) on the same subject(s) and passed by the Senate.

RUSSELL A. HUMPHREY, Chief Clerk.

MESSAGE FROM THE SENATE

May 22, 2002

MR. SPEAKER: I am directed to return to the House, House Bill(s) No(s). 1139; substituted for Senate Bill(s) on the same subject(s) and passed by the Senate.

RUSSELL A. HUMPHREY, Chief Clerk.

MESSAGE FROM THE GOVERNOR

May 22, 2002

MR. SPEAKER: I am directed by the Governor to return herewith: House Bill(s) No(s). 1201, 2716, 2737, 2892, 3138, 3270, 3272, also, House Joint Resolution(s) No(s). 971, 972, 973, 974, 975, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 995, 997 and 998; with his approval.

JAY BALLARD, Counsel to the Governor.

MESSAGE FROM THE SENATE

May 22, 2002

MR. SPEAKER: I am directed to return to the House, House Bill(s) No(s). 2939 and 3043; substituted for Senate Bill(s) on the same subject(s) and passed by the Senate.

RUSSELL A. HUMPHREY, Chief Clerk.

MESSAGE FROM THE SENATE

May 22, 2002

MR. SPEAKER: I am directed to return to the House, House Bill(s) No(s). 2915; substituted for Senate Bill(s) on the same subject(s), amended and passed by the Senate.

RUSSELL A. HUMPHREY, Chief Clerk.

MESSAGE FROM THE SENATE

May 22, 2002

MR. SPEAKER: I am directed to return to the House, Senate Bill(s) No(s). 1201.

The Senate nonconcurred in House Amendment(s) No(s). 2.

RUSSELL A. HUMPHREY, Chief Clerk.

MESSAGE FROM THE SENATE

May 22, 2002

MR. SPEAKER: I am directed to return to the House, House Bill(s) No(s). 2093.

The Senate refused to recede from its action in adopting Amendment(s) No(s). 1, 2 and 4.

RUSSELL A. HUMPHREY, Chief Clerk.

MESSAGE FROM THE SENATE

May 22, 2002

MR. SPEAKER: I am directed to return to the House, House Joint Resolution(s) No(s). 735 and 920; concurred in by the Senate.

RUSSELL A. HUMPHREY, Chief Clerk.

MESSAGE FROM THE SENATE

May 22, 2002

MR. SPEAKER: I am directed to return to the House, House Bill(s) No(s). 2570; substituted for Senate Bill(s) on the same subject(s) and passed by the Senate.

RUSSELL A. HUMPHREY, Chief Clerk.

MESSAGE FROM THE SENATE

May 22, 2002

MR. SPEAKER: I am directed to return to the House, House Joint Resolution(s) No(s). 789 and 836; concurred in by the Senate.

RUSSELL A. HUMPHREY, Chief Clerk.

ENGROSSED BILLS

May 22, 2002

The following bill(s) have been examined, engrossed, and are ready for transmission to the Senate: House Bill(s) No(s). 1131.

BETTY KAY FRANCIS, Chief Engrossing Clerk.

MESSAGE FROM THE SENATE

May 22, 2002

MR. SPEAKER: I am directed to transmit to the House, Senate Bill(s) No(s). 602, 1471, 1765 and 2449; all passed by the Senate.

RUSSELL A. HUMPHREY, Chief Clerk.

***Senate Bill No. 602** -- State Employees - Clarifies that constitutional officers are eligible for state group insurance program. Amends TCA Title 8, Chapter 27. by *Haun, *Cooper J. (HB669 by *Kisber)

WEDNESDAY, MAY 22, 2002 – EIGHTY-EIGHTH LEGISLATIVE DAY

***Senate Bill No. 1471** -- Alcoholic Offenses - Effective September 30, 2003, decreases from .10 percent to .08 percent blood alcohol content required to commit offense of DUI only if enactment of .08 percent DUI law is still federally required; repeals offense of adult DWI, but permits use of prior convictions for certain purposes; requires drug and alcohol assessment and treatment and use of ignition interlock device if person is convicted of second offense DUI and first conviction occurred within previous five years. Amends TCA Title 40, Chapter 33, Part 2 and Title 55, Chapter 10, Part 4. by *Haun, *Person. (HB884 by *Head, *Newton, *Langster, *Kent, *Cole (Carter), *Patton, *Ford S)

***Senate Bill No. 1765** -- Education - Provides that maximum degree to be required for local director of vocational education is either masters degree in curriculum instruction or masters degree in supervision and administration. Amends TCA Title 49, Chapter 11. by *Ramsey, *Elsa. (HB1706 by *Davis (Cocke))

Senate Bill No. 2449 -- Courts, Juvenile - Clarifies that appeals from juvenile delinquency proceedings must be made to criminal court or court with criminal jurisdiction and appeals from unruly proceedings or dependent and neglect proceedings must be made to circuit court. Amends TCA Title 37, Chapter 1. by *Miller J. (*HB2209 by *Bunch)

ENGROSSED BILLS

May 22, 2002

The following bills have been examined, engrossed, and are ready for transmission to the Senate: House Bill(s) No(s). 1266, 2651, also, House Joint Resolution(s) No(s). 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1107, 1108, 1109, 1110 and 1111.

BETTY KAY FRANCIS, Chief Engrossing Clerk.

MESSAGE FROM THE SENATE

May 22, 2002

MR. SPEAKER: I am directed to return to the House, House Joint Resolution(s) No(s). 674 and 1041; concurred in by the Senate.

RUSSELL A. HUMPHREY, Chief Clerk.

CONSENT CALENDAR

May 22, 2002

The following local bills have been placed on the Consent Calendar for **May 29, 2002**: House Bill(s) No(s). 3285.

ROLL CALL

The roll call was taken with the following results:

Present94

Representatives present were: Armstrong, Arriola, Baird, Beavers, Bittle, Black, Bone, Bowers, Boyer, Briley, Brooks, Brown, Buck, Bunch, Buttry, Caldwell, Casada, Chumney, Clem, Cole (Carter), Cole (Dyer), Cooper, Curtiss, Davidson, Davis (Washington), Davis (Cocke), DeBerry J, DeBerry L, Dunn, Ferguson, Fitzhugh, Ford, Fowlkes, Fraley, Garrett, Givens, Godsey, Goins, Hagood, Hargett, Hargrove, Harwell, Head, Hood, Johnson, Jones U, Kent, Kernell, Kisber, Langster, Lewis, Maddox, McDaniel, McDonald, McKee, McMillan, Miller, Montgomery, Mumpower, Newton, Odom, Overbey, Patton, Phelan, Phillips, Pinion, Pleasant, Pruitt, Rhinehart, Ridgeway, Rinks, Roach, Rowland, Sands, Sargent, Scroggs, Sharp, Shaw, Shepard, Stanley, Tidwell, Tindell, Todd, Towns, Turner (Shelby), Turner (Davidson), Vincent, West, White, Whitson, Windle, Winningham, Wood, Mr. Speaker Naifeh -- 94.

RECESS MOTION

On motion of Rep. Davidson, and pursuant Senate Joint Resolution No. 835, the House stood in recess until 10:00 a.m. on Wednesday, May 29, 2002.